EXHIBIT 174

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd. 13th Floor Los Angeles, CA 90067

Board of Directors Highland Capital Management LP 300 Crescent Court ste. 700 Dallas, TX 75201 May 31, 2021 Invoice 127958 Client 36027 Matter 00002 JNP

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 05/31/2021







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				<u>Hours</u>	Rate	Amount
			NextPoint motion to withdraw the reference, as well as feedback of others re same and consider (.5) Attend conference call with J Pomerantz, J Kim, G Demo re open issues on draft opposition to motions to withdraw reference (.3); Review of further revised draft of opposition to same (.2); Attend next conference call re same on next draft of opposition (.4).			
05/03/2021	JJK	BL	Emails Pomerantz, Demo re: opp to NexPoint/HCMFA withdrawal reference motions; research/analysis/revisions to same.	2.40	995.00	\$2,388.00
05/03/2021	JJK	BL	Prepare opp to HCMFA withdrawal reference motion and analysis for same.	2.70	995.00	\$2,686.50
05/03/2021	JJК	BL	Analysis/revise oppositions to NexPoint and HCMFA reference motions.	3.70	995.00	\$3,681.50
05/03/2021	JJK	BL	Research/analysis re: reference withdrawal matters.	1.00	995.00	\$995.00
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05/03/2021	JNP	BL	Brief review of motion to enforce reference.	1.00	1295.00	\$1,295.00
05/03/2021	JNP	BL	Conference with Robert J. Feinstein regarding motion to enforce reference and related litigation matters.	0.30	1295.00	\$388.50
05/03/2021	JNP	BL	Conference with Robert J. Feinstein and Gregory V. Demo regarding motion to enforce reference.	0.20	1295.00	\$259.00
05/03/2021	JNP	BL	Review revised motion to withdraw reference response.	0.30	1295.00	\$388.50
05/03/2021	JNP	BL	Conference with Jonathan J. Kim, Ira D. Kharasch and Gregory V. Demo regarding motion to withdraw	0.60	1295.00	\$777.00

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36027 -00002 May 31, 2021 Amount Hours Rate reference responses (2x).

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				<u>Hours</u>	Rate	Amount
	2					
05/03/2021	GVD	BL	Revise and serve demand letter re Dugaboy note	0.30	950.00	\$285.00
05/03/2021	GVD	BL	Revise and serve demand letter re Hunter Mountain note	0.30	950.00	\$285.00
05/03/2021	GVD	BL	Conference with PSZJ team re response to withdrawal of reference in NPA notes litigation	0.40	950.00	\$380.00
05/03/2021	GVD	BL	Review and revise response to motion to enforce the reference in NPA notes litigation	1.20	950.00	\$1,140.00
05/03/2021	GVD	BL	Follow up conference with PSZJ re opposition to motion to withdraw the reference in NPA litigation	0.30	950.00	\$285.00
05/03/2021	GVD	BL	Conference with J. Morris re status of notes litigation	0.20	950.00	\$190.00
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05/04/2021	IDK	BL	Review of J Kim's next version of opposition to NextPoint motion to withdraw reference (.3); E-mails with J Kim re my proposed changes to same, as well as comments/questions from J Pomerantz re same and J Kim response (.5); Review of final revised opposition to same and green light to file (.2).	1.00	1325.00	\$1,325.00
05/04/2021	JJK	BL	Emails Demo, Morris, Pomerantz on withdrawal reference pleadings issues; research/revise oppositions to reference withdrawal motions.	2.20	995.00	\$2,189.00

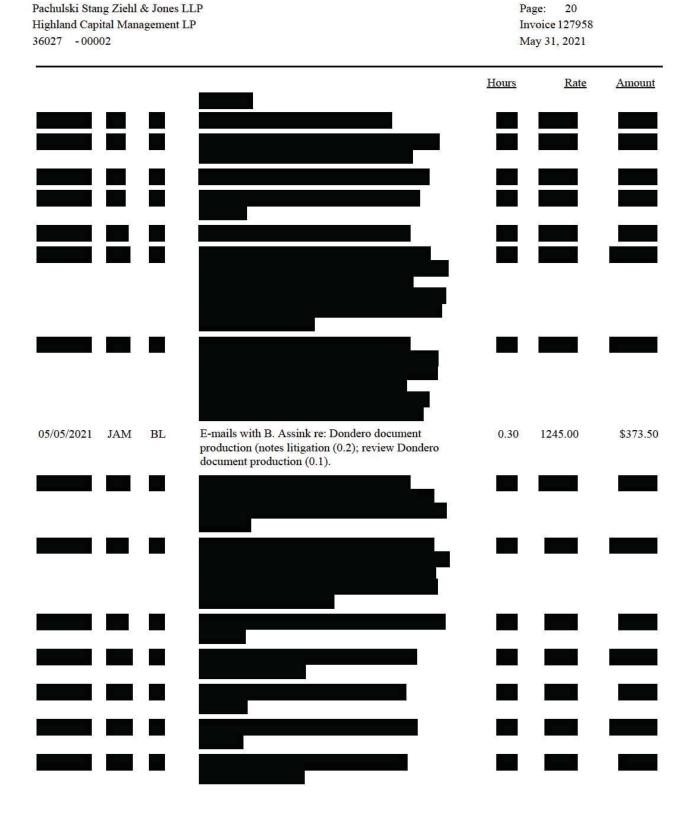
Pachulski Star Highland Cap 86027 - 000	ital Man			Page: 17 Invoice 127958 May 31, 2021		
				Hours	Rate	Amount
05/04/2021	JJK	BL	Emails Demo on withdrawal reference pleadings issues; research/revise oppositions to reference withdrawal motions.	3.90	995.00	\$3,880.50
05/04/2021	JNP	BL	Review and comment on latest version on motion to withdraw reference.	0.20	1295.00	\$259.00
05/04/2021	RJF	BL	Review and revise motion to enforce the reference.	1.30	1395.00	\$1,813.50
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05/04/2021	JAM	BL	Review draft opposition to withdraw the reference	0.40	1245.00	\$498.00
			(NexPoint) (0.4).			

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05/04/2021	при	DI	Call with DSI recording NDA decoment production	0.50	605.00	\$247.50
05/04/2021	UKW	DL	Call with DSI regarding NPA document production for demand note proceeding.	0.50	695.00	\$347.50
05/04/2021	HRW	BL	Call with R. Half and J. Morris regarding NPA document production in demand note litigation.	0.20	695.00	\$139.00
05/04/2021	HRW	BL	Prepare for call with R. Half and J. Morris regarding NPA document production in demand note litigation.	1.20	695.00	\$834.00
05/04/2021	HRW	BL	Review J. Seery comments to NPA R&O's in	0.30	695.00	\$208.50

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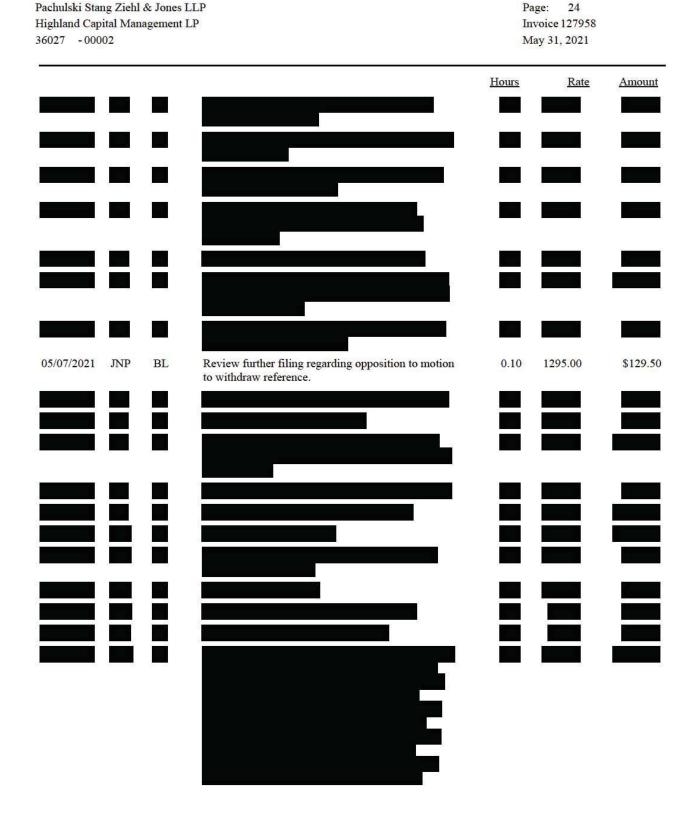
Highland Capital Management LP

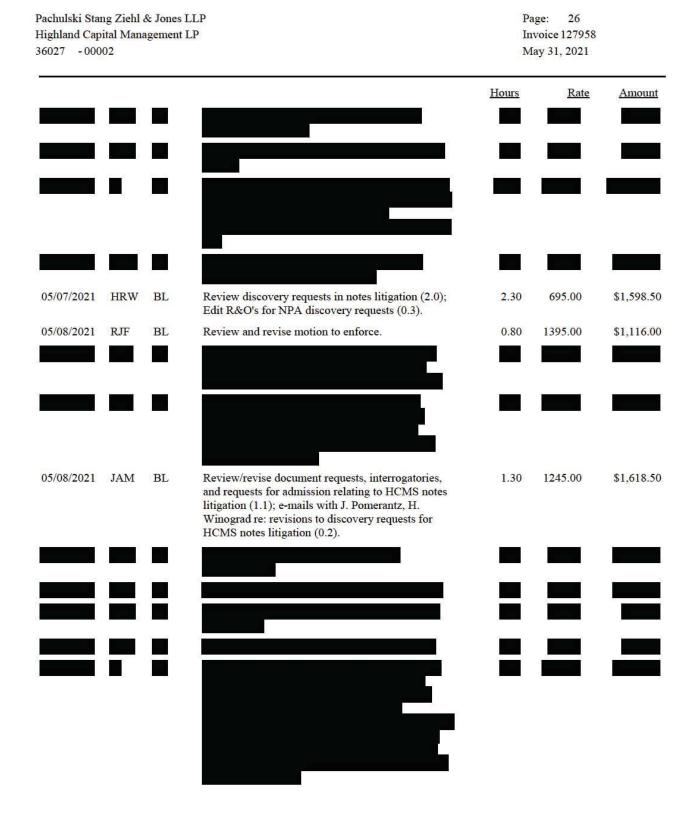
36027 -00002 May 31, 2021 Amount Hours Rate 05/05/2021 HRW BL 0.50 695.00 \$347.50 Prepare interrogatory verification for R&Os to NPA interrogatories in notes litigation (0.2); Review Seery's comments to R&Os to NPA discovery demands in notes litigation (0.1); Review DSI documents for production for NPA discovery demands in notes litigation (0.2). 05/06/2021 IDK BL 0.80 \$1,060.00 Review of updated opposition to Dondero motion to 1325.00 withdraw reference (.3); E-mails with J Kim re same and further issues on mandatory withdrawal of reference and related memo on same (.3); Telephone conference with J Pomerantz re same (.1); E-mails with J Kim re status and ok to file (.1). E-mails with J Kim re mistake made in filed 05/06/2021 IDK BL 0.40 1325.00 \$530.00 opposition today to Dondero motion to withdraw ref, and how to fix, including feedback of J Pomerantz re same. BL 05/06/2021 JJK 995.00 \$4,179.00 Emails Kharasch on withdrawal reference 4.20 objections, and revise same and prepare supplement

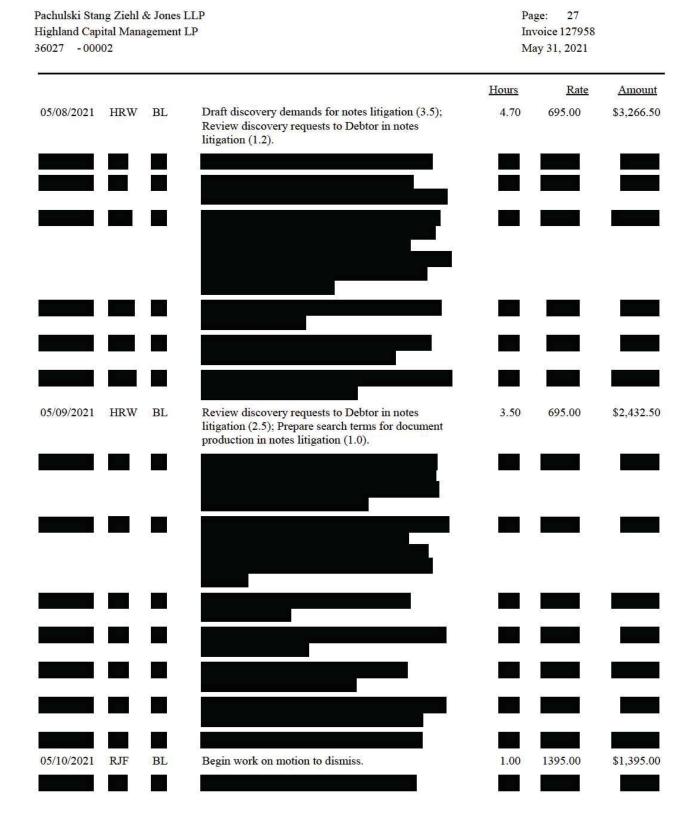
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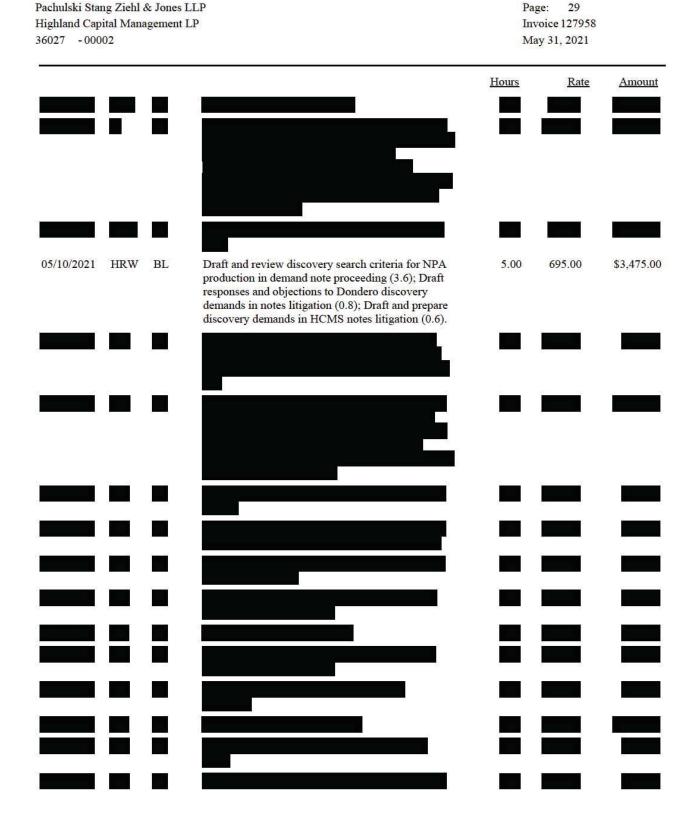
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05/06/2021	HRW	BL	Communicate with R. Half re: NPA production in demand note proceeding (0.9); Call with L. Canty re: NPA production in notes litigation (0.1); Review critical dates re: Dondero stay motion and motion to withdraw reference in notes litigation (0.2); Prepare search terms for NPA production in notes litigation (0.3).	1.50	695.00	\$1,042.50
05/07/2021	IDK	BL	Review of draft addendum to prior filed opposition to Dondero motion to withdraw ref and consider changes (.2); E-mails with J Kim and J Pomerantz re same, as well as feedback of local counsel (.3).	0.50	1325.00	\$662.50
05/07/2021	JJK	BL	Two conf. calls (2x 0.3) with Pomerantz, Kharasch, Demo on reference withdrawal oppositions.	0.60	995.00	\$597.00

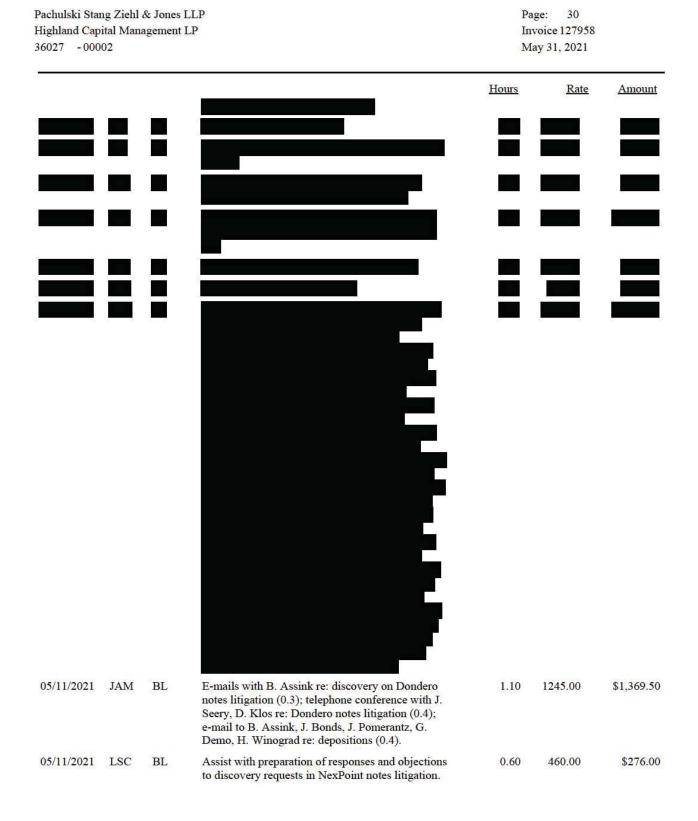










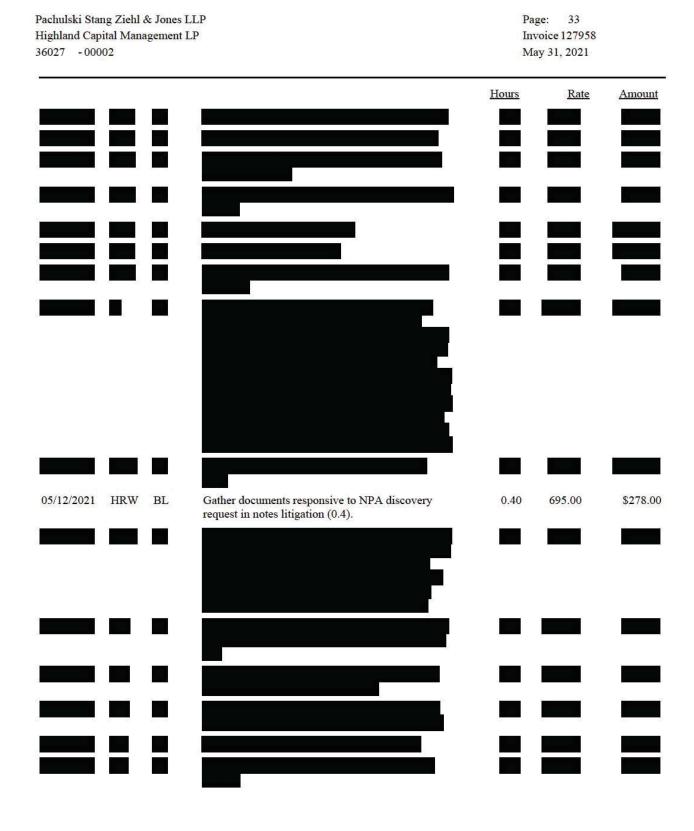


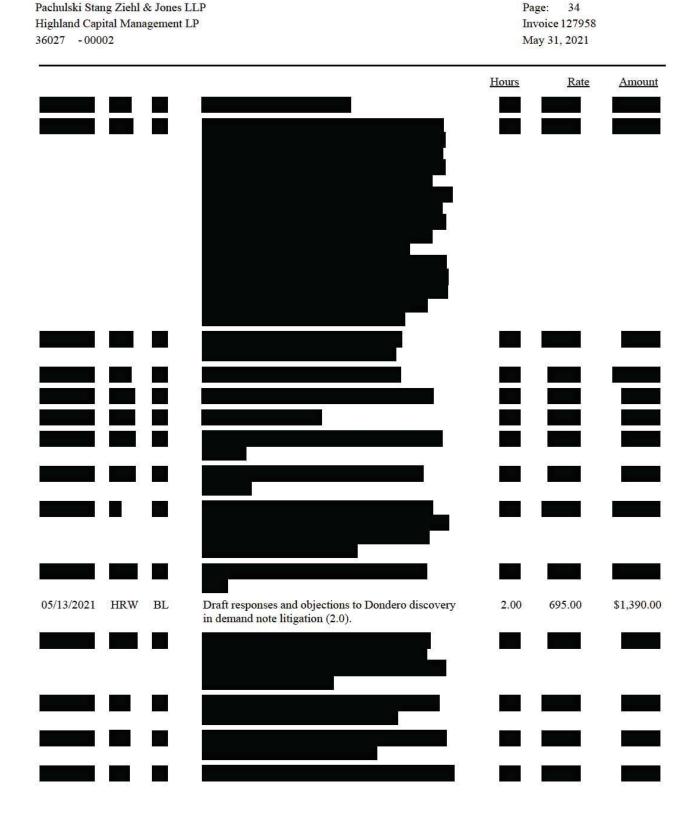
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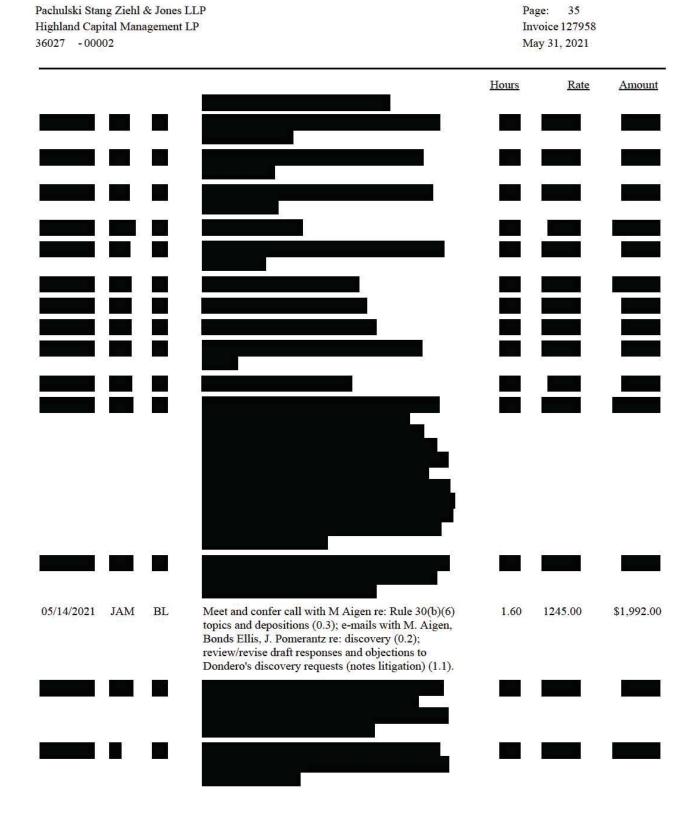
Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

36027 -00002 May 31, 2021 Hours Rate Amount 05/11/2021 GVD 950.00 \$285.00 Conference with counsel to Hunter Mountain re note 0.30 demand and follow up re same 05/11/2021 HRW BL Draft search terms for document production for NPA 1.90 695.00 \$1,320.50 notes litigation (1.3); Communicate with R. Half re: document production for NPA notes litigation (0.6).





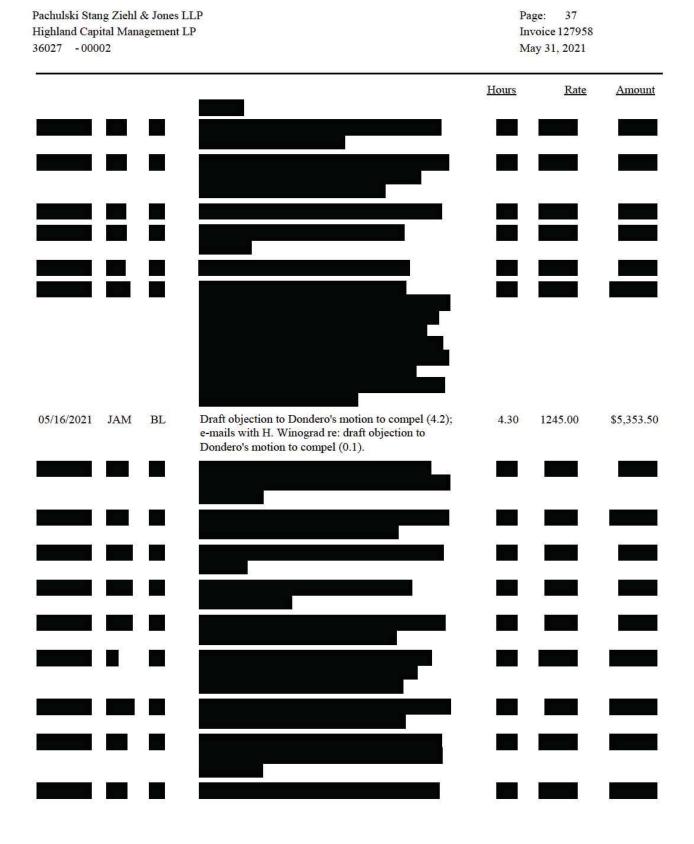


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36027 -00002 May 31, 2021 Hours Rate Amount 05/14/2021 HRW BL Draft responses and objections to Dondero discovery 2.50 695.00 \$1,737.50 in demand note litigation (2.5).



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				<u>Hours</u>	Rate	Amount
05/17/2021	JAM	BL	Review/revise objection to Dondero motion to compel (2.0); e-mails with J. Pomerantz, G. Demo, H. Winograd, Z. Annable re: draft objection to Dondero motion to compel (0.2); draft JAM declaration in support of Debtor's objection to Dondero motion to compel (0.7); e-mails with G. Demo, H. Winograd, L. Canty, Z. Annable re: exhibits to JAM declaration (0.2).	3.10	1245.00	\$3,859.50
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05/17/2021	LSC	BL	Conduct research in connection with motion to withdraw the reference for G. Demo.	0.60	460.00	\$276.00
05/17/2021	LSC	BL	Assist with preparation of exhibits in connection with Debtor's Objection to Motion to Compel Deposition Testimony of James P. Seery, Jr.	0.40	460.00	\$184.00
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05/17/2021	GVD	BL	Review response to motion to compel	0.30	950.00	\$285.00
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05/17/2021	GVD	BL	Prepare for argument on motions to withdraw the reference	0.80	950.00	\$760.00

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36027 -00002 May 31, 2021 Hours Rate Amount preparation for hearing. 05/18/2021 JNP BL Review reply regarding motion to withdraw 0.10 1295.00 \$129.50 reference. Review response re discovery motion to compel 1050.00 05/18/2021 JMF BL 0.30 \$315.00 testimony re demand notes.

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05/19/2021 IDK

BL

36027 -00002 May 31, 2021 Hours Rate Amount 05/18/2021 GVD BL 950.00 Prepare for argument re motion to withdraw the 4.90 \$4,655.00 reference 05/18/2021 HRW BL Gather general discovery in notes litigations (0.5); 1.20 695.00 \$834.00 Review discovery demands in notes litigation (0.3); Call with J. Morris re: general discovery for notes litigation (0.1); Call with J. Donahue re: general discovery for notes litigation (0.3).

Attend conference call with J Pomerantz, others on

\$1,590.00

1.20

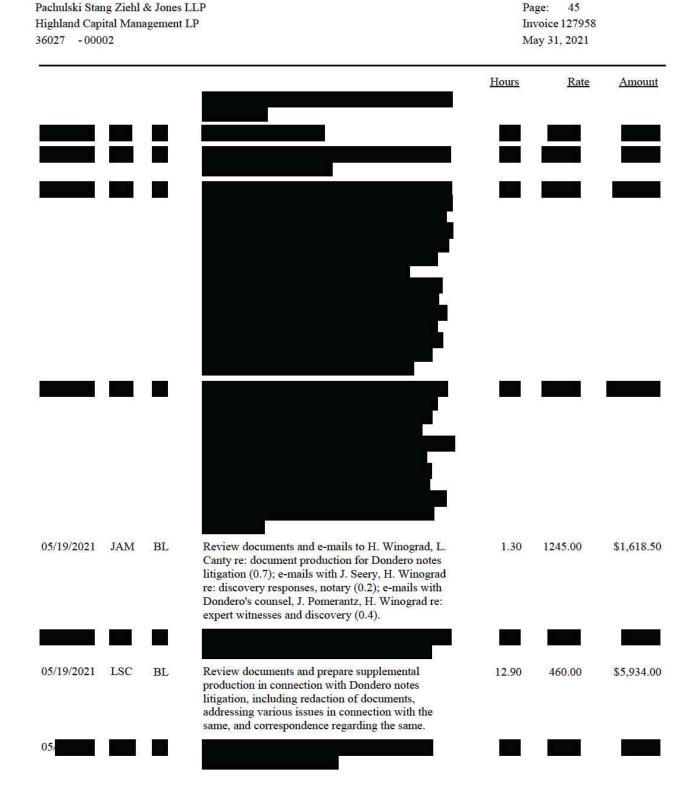
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Highland Capital Management LP

36027 -00002 May 31, 2021 Hours Rate Amount presentation of opposition argument to motions to withdraw the reference (1.2) 05/19/2021 JNP BL Participate on zoom hearing prep for motions to 1.20 1295.00 \$1,554.00 withdraw the reference with Gregory V. Demo, John A. Morris and Ira D. Kharasch.



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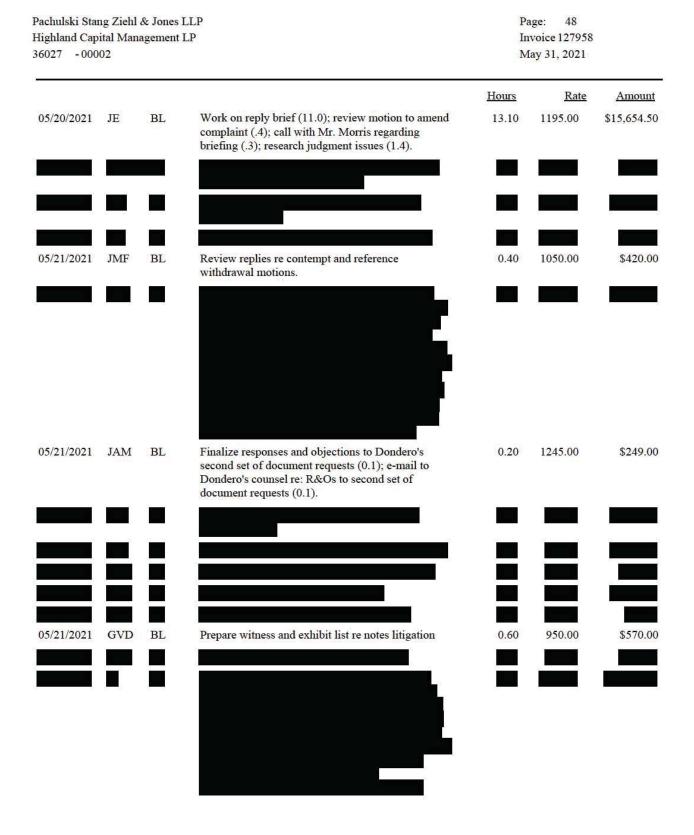
36027 -00002 May 31, 2021 Hours Rate Amount 05/19/2021 GVD BL 1.20 950.00 \$1,140.00 Attend conference with PSZJ working team re preparation for argument on motion to withdraw reference 05/19/2021 GVD BL Prepare for argument on motion to withdraw the 3.10 950.00 \$2,945.00 reference 05/19/2021 HRW BL Send amended discovery R&Os to opposing counsel 0.50 695.00 \$347.50 for NPA requests in notes litigation (0.1); Call with J. Morris and C. Mackle re: document production to Dondero's first Set of requests in notes litigation (0.3); Send production to Dondero's counsel in response to first set of requests in notes litigation (0.1).05/19/2021 HRW BL Prepare and review document production to 2.20 695.00 \$1,529.00 Dondero's first Set of requests in notes litigation (2.2).

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36027 -000	5027 -00002				May 31, 2021			
(g				Hours	Rate	Amount		
05/20/2021	JNP	BL	Participate in hearing on motion to compel J. Seery testimony.	1.10	1295.00	\$1,424.50		
05/20/2021	JNP	BL	Emails to and from J. Seery and Gregory V. Demo regarding Latham communications with DSI.	0.10	1295.00	\$129.50		
05/20/2021	JNP	BL	Emails to and from John A. Morris regarding U. S. Trustee inquiry.	0.10	1295.00	\$129.50		
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05/20/2021	JAM	BL	Preparing for hearing on Dondero's motion to compel (0.3); court conference on Dondero's motion to compel (1.1).	1.40	1245.00	\$1,743.00		
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05/20/2021	GVD	BL	Attend hearing re motion to compel	1.10	950.00	\$1,045.00		
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950.00

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950.00

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Highland Capital Management LP

05/23/2021

05/23/2021 GVD

05/23/2021 GVD

GVD

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36027 -00002 May 31, 2021 Hours Rate Amount 05/23/2021 JAM BL Prepare Subpoena for DC Sauter (notes litigation) 4.70 \$5,851.50 1245.00 for hearing on motion to withdraw reference (0.3); e-mail to J. Seery, T. Surgent, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: strategy, hearing on motion to withdraw reference (0.3); telephone conference with J. Seery, G, Demo re: prepare for deposition (Dondero notes litigation) (1.1); e-mail to H. Winograd, J. Pomerantz, I. Kharasch, G. Demo re: motion for summary judgment, opposition to motions to amend (0.7); communications with G. Demo re: potential exhibits for amended W&E list (0.2); e-mails with B. Levine re: Dondero summary judgment motion (0.1); telephone conference with H. Winograd re: Dondero summary judgment motion (0.1); telephone conference with G. Demo re: documents/exhibit list/facts re: motion to withdraw the reference (1.1); revise Sauter subpoena (0.1); e-mails with Z. Annable re: Sauter subpoena (0.3); amend Sauter subpoena (0.1); e-mails with D. Rukavina, J. Pomerantz re: Sauter subpoena (0.3). 05/23/2021 LSC BL Preparation of amended exhibit lists (3) and exhibits 5.60 460.00 \$2,576.00 for 5/25/21 hearing, including redactions to certain Conference with J. Morris re motion to withdraw 05/23/2021 GVD BL 0.10 950.00 \$95.00 reference

Conference with J. Seery and J. Morris re depo prep

Conference with J. Morris re evidentiary issues for

Prepare for hearing on motion to withdraw the

for notes litigation

reference

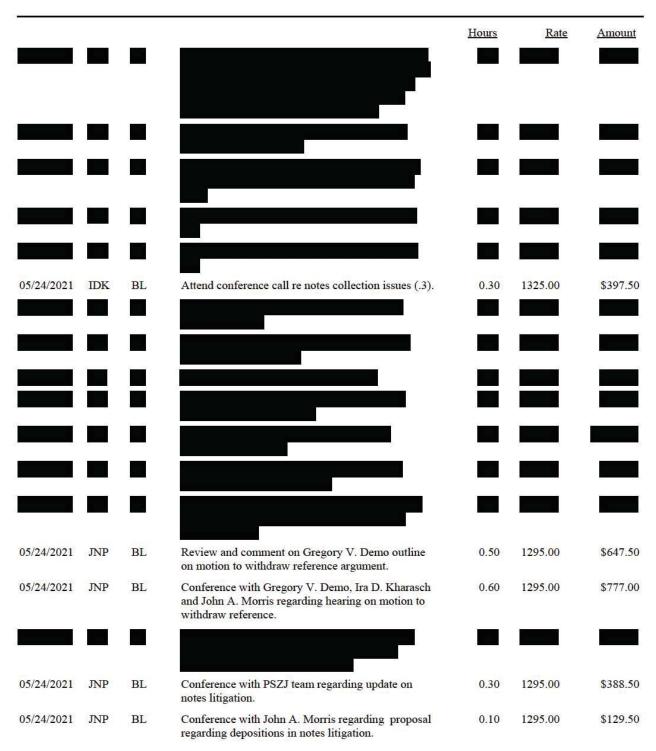
motion to withdraw the reference

\$1,140.00

\$1.045.00

\$2,755.00

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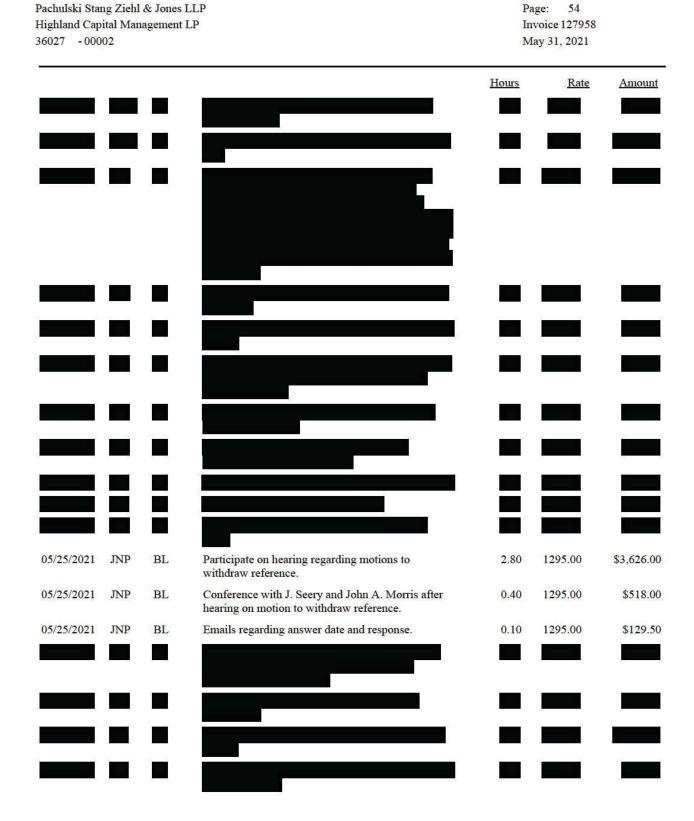
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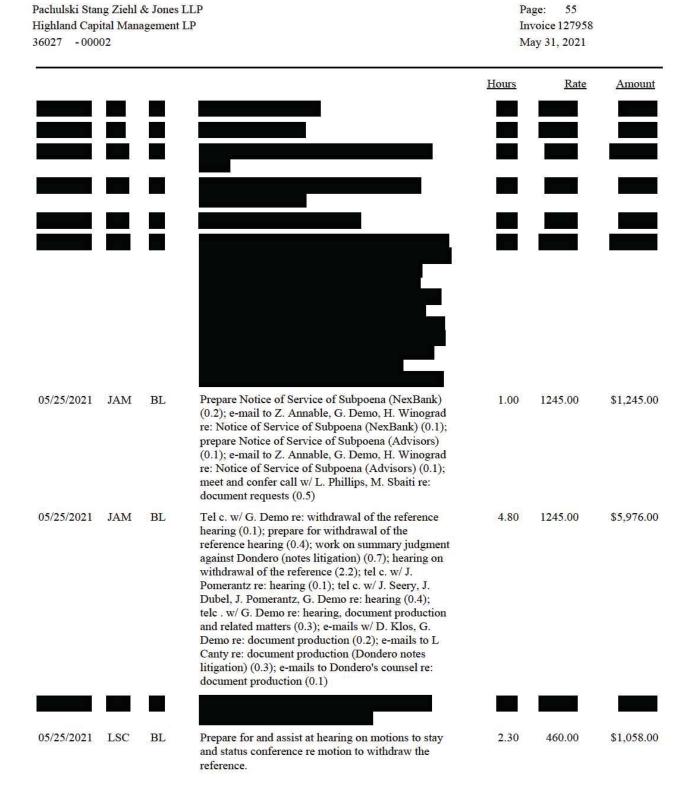
Highland Capital Management LP

36027 -00002 May 31, 2021 Amount Hours Rate 05/24/2021 RJF BL Internal call regarding notes litigation. \$418.50 0.30 1395.00 BL 05/24/2021 **JMF** Review litigation summary (.3); status call re same 0.60 1050.00 \$630.00 05/24/2021 **JMF** BL Status call re issues in notes payable litigation. 0.30 \$315.00 1050.00 05/24/2021 **JMF** BL Review motion to amend answer re notes litigation. 0.30 1050.00 \$315.00 05/24/2021 JAM BL Tel c. w/ J. Dubel re: motions to amend and 7.00 1245.00 \$8,715.00 withdraw the reference (0.4); prepare for Seery deposition (0.3); tel c. w/ G. Demo re: hearing on motion to withdraw the reference (0.2); tel c. w/ J. Seery re: deposition (0.1); review/revise exhibit list for hearing on motion to withdraw the reference (0.2); prepare for hearing on withdrawal of the reference (0.7); communications w/ J. Pomerantz, G. Demo re: debtor's schedules and Advisor's notes (0.2); Seery deposition (Dondero notes litigation) (2.7); tel c. w/ J. Seery, G. Demo re: deposition and hearing (0.4); tel c. w/ J. Pomerantz, I. Kharasch, G. Demo re: hearing on motion to withdraw the

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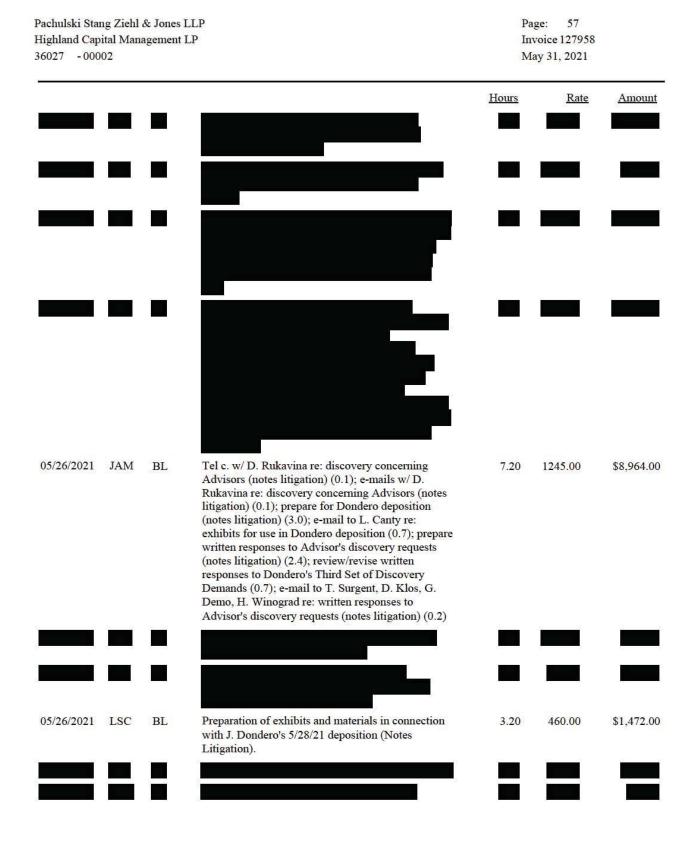
				<u>Hours</u>	Rate	Amount
			reference (0.6); tel c. w/ J. Pomerantz re: hearing (0.2); tel c. w/ J. Pomerantz re: e-mails with D. Rukavina concerning motion to amend/motion to withdraw reference (0.1); e-mails w/ D. Rukavina, J. Pomerantz re: motion to amend/Sauter subpoena/motion to withdraw the reference (0.4); e-mail to J. Seery re: deposition transcript (0.1); e-mail to J. Seery, J. Pomerantz, G. Demo, H. Winograd re: Klos deposition (0.1); e-mails w/ M. Aigen, J. Seery, T. Surgent, D. Klos re: discovery in Dondero notes litigation (0.3)			
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05/24/2021	GVD	BL	Prepare for hearing on motion to withdraw the reference	5.80	950.00	\$5,510.00
05/24/2021	GVD	BL	Attend deposition of J. Seery re Dondero note litigation	2.60	950.00	\$2,470.00
05/24/2021	GVD	BL	Conference with J. Seery and J. Morris re follow up to Seery deposition	0.30	950.00	\$285.00
05/24/2021	GVD	BL	Conference with PSZJ re status of note litigation and motion to withdraw the reference	0.60	950.00	\$570.00
05/24/2021	GVD	BL	Attend PSZJ status conference on notes litigation	0.30	950.00	\$285.00





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				<u>Hours</u>	Rate	Amount
05/25/2021	LSC	BL	Preparation of supplemental production to Dondero.	2.00	460.00	\$920.00
				617		
05/25/2021	GVD	BL	Prepare for evidentiary hearing on motion to withdraw reference	3.80	950.00	\$3,610.00
05/25/2021	GVD	BL	Attend hearing on motions to withdraw the reference	2.10	950.00	\$1,995.00
05/25/2021	GVD	BL	Conference with team re follow up to hearing on motion to withdraw the reference	0.50	950.00	\$475.00
05/25/2021	GVD	BL	Conference with J. Morris on evidentiary hearing on motion to withdraw	0.30	950.00	\$285.00
05/25/2021	GVD	BL	Conference with J. Romey re status of note litigation	0.20	950.00	\$190.00
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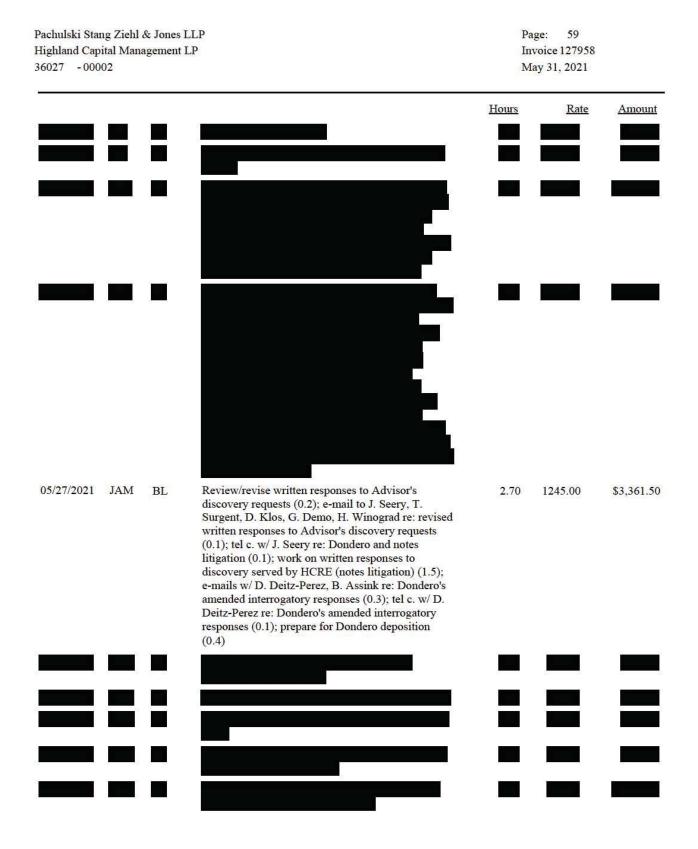
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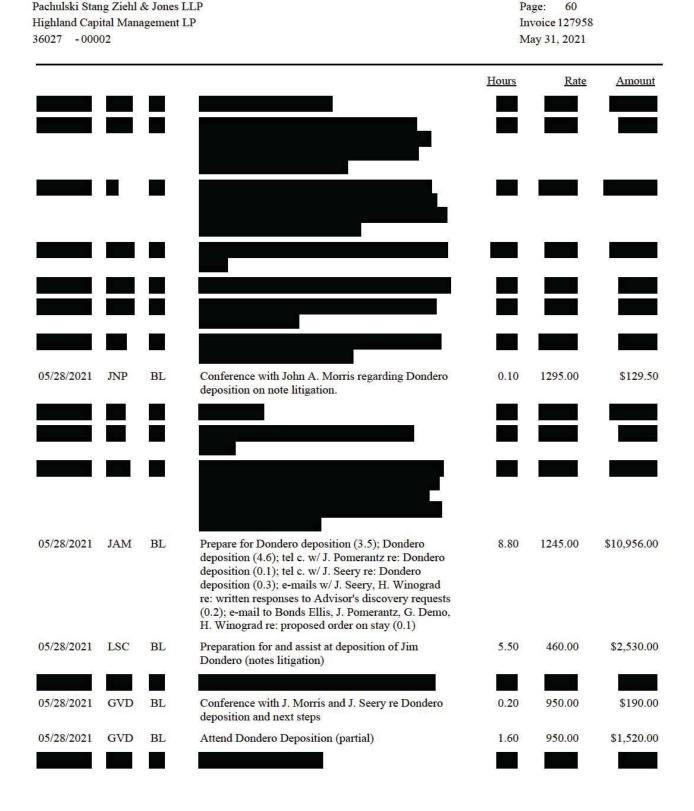
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Highland Capital Management LP

36027 -00002 May 31, 2021 Hours Rate Amount Review production for NPA discovery requests in 05/26/2021 HRW BL 0.30 695.00 \$208.50 notes litigation (0.3) 05/27/2021 JNP BL Conference with John A. Morris regarding Dondero 0.20 1295.00 \$259.00 amended answer and discovery issues.





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Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

36027 -00002 May 31, 2021 Hours Rate Amount 05/28/2021 HRW 0.40 695.00 \$278.00 Prepare responses and objections to HCMFA discovery in notes litigation (0.4) 05/28/2021 HRW BL Deposition of Dondero in connection with notes 3.50 695.00 \$2,432.50 litigation (3.5) 05/28/2021 HRW BL Review production for NPA discovery requests in 0.30 695.00 \$208.50 notes litigation (0.3) 05/29/2021 JAM BL E-mails to Counsel re: Zoom instructions for 0.60 1245.00 \$747.00 Tuesday's depositions (0.2); review Dondero written responses to discovery (0.2); e-mail to B. Assink, C. Taylor, J. Pomerantz, G. Demo, H. Winograd re: Dondero's written responses to discovery (0.2) 05/29/2021 JAM BL Review HCMFA's second request for discovery 4.40 1245.00 \$5,478.00 (0.2); e-mails w/ T. Surgent, D. Klos, G. Demo, H. Winograd re: HCMFA's second request for discovery (0.1); review Dondero expert report (0.3); e-mails w/ J. Pomerantz, G. Demo, H. Winograd re: Dondero's expert report (0.2); draft written responses to HCRE's document requests, interrogatories, and requests for admission (3.1); e-mail to G. Demo, H. Winograd re: draft written responses to HCRE's document requests, interrogatories, and requests for admission (0.1); tel c. w/ H. Winograd re: opposition to HCRE/Services motion for leave to serve amended complaint and cross-motion for summary judgment (0.4)

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				<u>Hours</u>	Rate	<u>Amount</u>
05/29/2021	HRW	BL	Draft opposition to HCRE and HCMS motions for leave to amend answer in notes litigation (2.0)	2.00	695.00	\$1,390.00
05/29/2021	HRW	BL	Call with J. Morris re: opposition to HCRE and HCMS motions for leave to amend answer in notes litigation (0.3)	0.30	695.00	\$208.50
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05/30/2021	JAM	BL	Review documents (1.9); tel c. w/ G. Demo re: document review/facts (1.1); e-mails w/ G. Demo re: facts (0.3); tel c. w/ G. Demo re: document review/facts (0.6); prepare for depositions (0.8)	4.70	1245.00	\$5,851.50
05/30/2021	GVD	BL	Conference with J. Morris re deposition preparation	0.60	950.00	\$570.00
05/30/2021	HRW	BL	Draft opposition to HCRE and HCMS motions for leave to amend answer in notes litigation (3.5)	3.50	695.00	\$2,432.50
05/31/2021	JAM	BL	Analyze G. Scott prior deposition transcript (2.4); analysis of use of Scott transcript, and e-mail to J. Pomerantz, G. Demo, H. Winograd concerning the same (0.6); prepare for Dondero and Scott depositions (6.4); e-mails w/ L. Canty re: deposition exhibits (0.2); tel c. w/ G. Demo, C. Wilkins re: potential conflicts (0.2);	10.40	1245.00	\$12,948.00
05/31/2021	JAM	BL	Review/revise discovery requests for HCRE (notes	0.70	1245.00	\$871.50
			litigation (0.4); e-mail to L. Drawhorn, G. Demo, H. Winograd, J. Rudd re: discovery requests for HCRE (notes litigation) (0.1); tel c. w/ H. Winograd re: status of brief for opposition to motion to amend (0.2)			

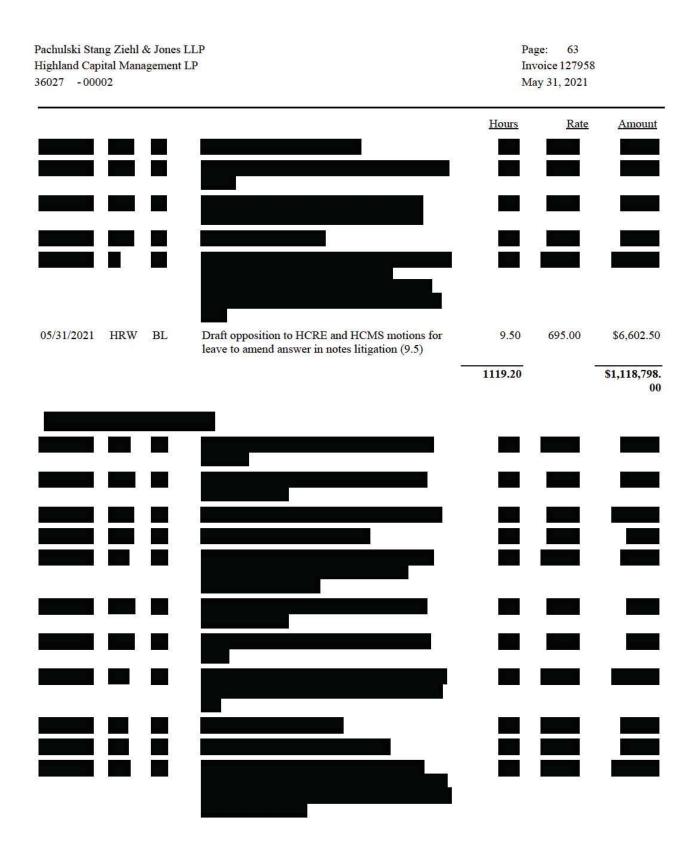


EXHIBIT 175

Pachulski Stang Ziehl & Jones LLP

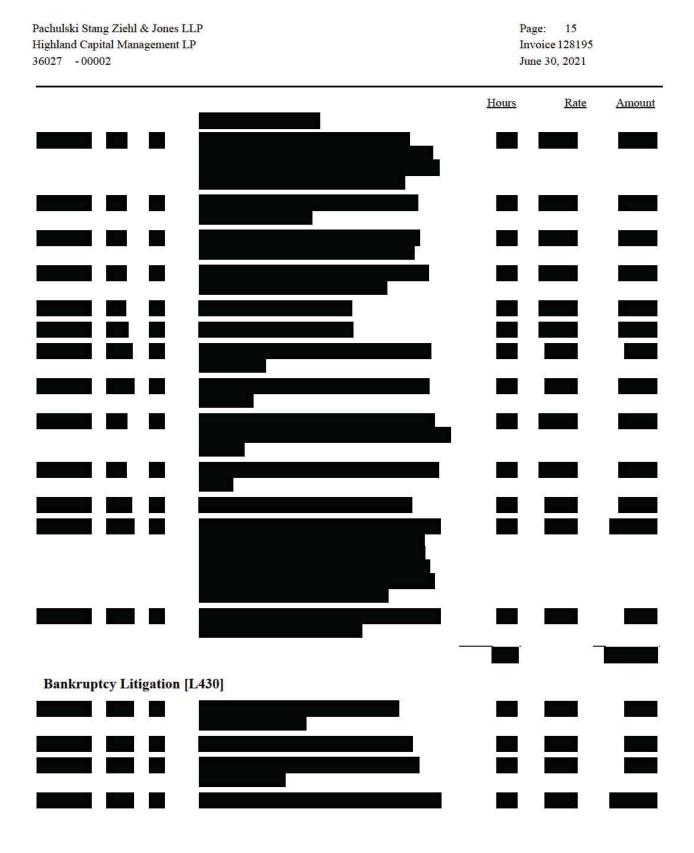
10100 Santa Monica Blvd. 13th Floor Los Angeles, CA 90067

Board of Directors Highland Capital Management LP 300 Crescent Court ste. 700 Dallas, TX 75201 June 30, 2021 Invoice 128195 Client 36027 Matter 00002 JNP

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 06/30/2021





Pachulski Stang Ziehl & Jones LLP

06/01/2021 JAM

BL

Highland Capital Management LP Invoice 128195 36027 -00002 June 30, 2021 Hours Rate Amount 05/19/2021 CHM BL Review Dondero notes litigation document 4.50 750.00 \$3,375.00 production and cross check for privilege filter; email production links to H. Winograd and J. Morris.

Review/revise objection to HCMS motion for leave

to amend answer (2.2); e-mail to J. Pomerantz, G.

\$3,735.00

3.00

1245.00

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			Demo, H. Winograd re: comments to draft objection to HCMS motion for leave to amend answer (0.1); tel c. w/ J. Dubel re: expert report (0.1); tel c. w/ H. Winograd re: objections to HCRE and HCMS motions for leave to amend answer (0.1); review/revise objections to HCRE and HCMS motions for leave to amend answer (0.2); e-mails w/ G. Demo, H. Winograd, D. Klos, K. Hendrix, J. Donohue re: partial payment/performance by HCRE and HCMS (0.1); communications w/ H. Winograd, Z. Annable re: finalizing and filing objections to HCRE and HCMS motions for leave to amend answer (0.2)	Hours	Rate	Amount
Q	i.	ş				
06/01/2021	LSC	BL	Draft declarations in support of oppositions to HCMS and HCRE motions to amend (1.1); assist with revising and finalizing of oppositions to HCMS and HCRE motions to amend (1.3); revise and finalize exhibits (.5).	2.90	460.00	\$1,334.00
06/01/2021	GVD	BL	Review and revise motion for leave to amend HCRE and HCMS answers	2.00	950.00	\$1,900.00
06/01/2021	HRW	BL	Draft opposition to HCRE and HCMS motions for	12.50	695.00	\$8,687.50
00/01/2021	nkw	DL	leave to amend answer in notes litigation (12.5)	12.50	093.00	\$6,067.30
06/02/2021	JMF	BL	Review responses to motions for leave to amend answer.	0.40	1050.00	\$420.00

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Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

36027 -00002 June 30, 2021 Hours Rate Amount 06/02/2021 HRW BL Review documents produced in Dondero notes 0.10 695.00 \$69.50 litigation (0.1) 0.90 06/03/2021 JAM BL E-mail to L. Drawhorn, J. Rudd, J. Pomerantz, G. 1245.00 \$1,120.50 Demo re: motion to withdraw the reference and related matters (0.3); e-mails w/ M. Aigen, Dondero's other counsel, J. Pomerantz, G. Demo, H. Winograd re: scheduling of expert depositions (0.1); prepare notices of deposition for Nancy Dondero and Dondero's expert witnesses and send to Z. Annable, H. Winograd (0.2); review HCRE/HCMS motions (0.3) 06/03/2021 LSC BL Review documents, redact, and prepare NexPoint 8.20 460.00 \$3,772.00 document production (and address numerous issues with). 06/03/2021 GVD BL Correspondence with J. Donohue re demand letters 0.20 950.00 \$190.00 on notes 06/03/2021 GVD BL Correspondence with J. Morris re HCRE/HCMS 0.20 950.00 \$190.00 motions for leave to amend

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Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

6027 -000	02			Ju	ne 30, 2021	
				Hours	Rate	Amount
06/03/2021	GVD	BL	Correspondence with J. Morris and H. Winograd re status of notes litigation	0.20	950.00	\$190.00
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						23
						225
06/03/2021	HRW	BL	Prepare document production for NexPoint discovery in connection with notes litigation (1.0)	1.00	695.00	\$695.00
06/03/2021	HRW	BL	Call with L. Canty re: document production for NexPoint discovery in connection with notes litigation (0.2)	0.20	695.00	\$139.00
06/03/2021	HRW	BL	Draft responses and objections to document requests in HCMS notes litigation (1.0)	1.00	695.00	\$695.0
06/03/2021	HRW	BL	Prepare search terms for document production in HCMS notes litigation (0.5)	0.50	695.00	\$347.50
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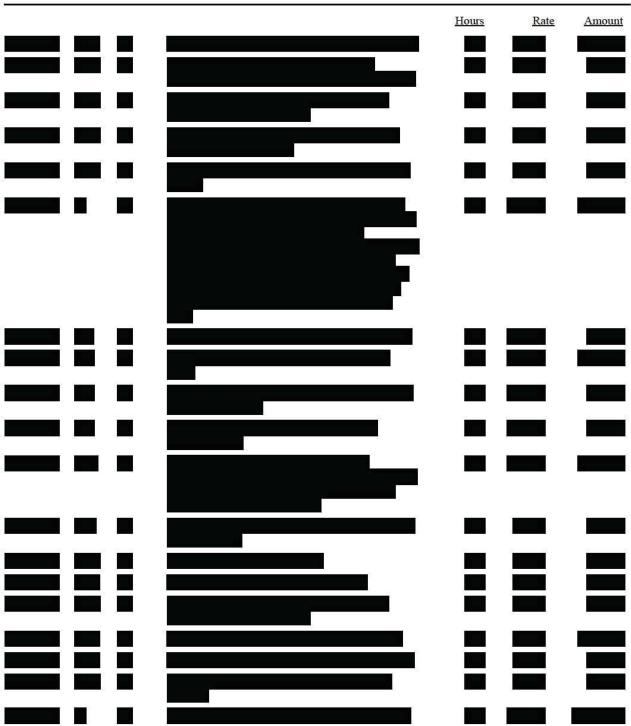
Invoice 128195

Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

36027 -00002 June 30, 2021 Hours Rate Amount 06/04/2021 LSC BL Transmit HCRE document production to additional 0.20 460.00 \$92.00 party. 06/04/2021 HRW 0.60 BL Draft 30(b)(6) deposition notice directed to HCMS 695.00 \$417.00 and HCRE (0.6) 06/04/2021 HRW BL Send production for NexPoint discovery demands 0.10 695.00 \$69.50 re: notes litigation to opposing counsel (0.1)

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				Hours	Rate	Amount
06/06/2021	HRW	BL	Review HCMFA motion to amend (1.0)	1.00	695.00	\$695.00
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06/07/2021	JAM	BL	Review/revise Rule 30(b)(6) deposition notice for HCRE (0.1); e-mail to H. Winograd re: Rule 30(b)(6) deposition notice for HCRE (0.1); review/revise Rule 30(b)(6) deposition notice for HCMS (0.1); e-mail to H. Winograd re: Rule 30(b)(6) deposition notice for HCMS (0.1).	0.40	1245.00	\$498.00
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Highland Capital Management LP

36027 -00002 June 30, 2021 Hours Rate Amount 06/07/2021 HRW BL Communications with DSI re: HCMS discovery 0.20 695.00 \$139.00 06/07/2021 HRW BL Draft R&Os to HCMS discovery (2.6) 2.60 695.00 \$1,807.00 Draft search terms for HCMS document production 06/07/2021 HRW BL 1.00 695.00 \$695.00 (1.0)06/07/2021 HRW BL Edit and review 30(b)(6) deposition notice directed 0.20 695.00 \$139.00 to HCMS and HCRE (0.2)

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Pachulski Stang Ziehl & Jones LLP

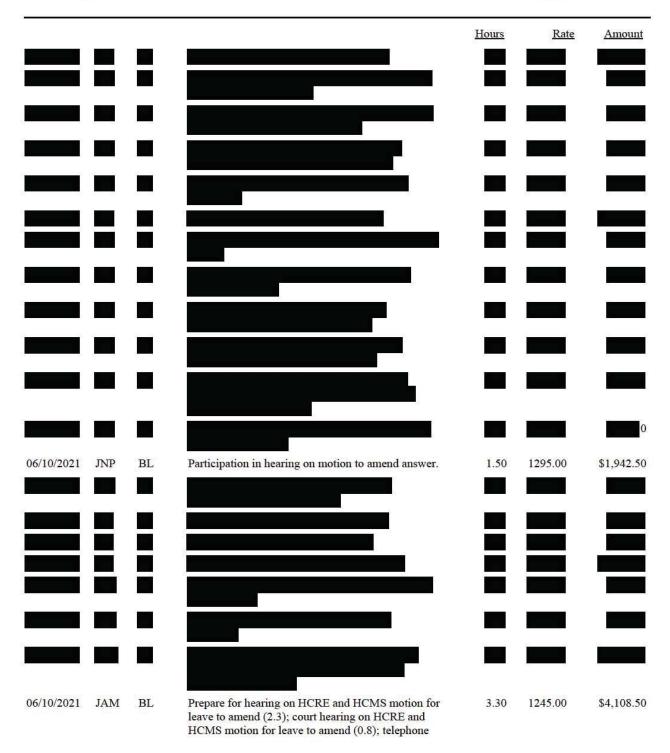
Highland Capital Management LP

36027 -00002 June 30, 2021 Hours Rate Amount 06/08/2021 HRW Communications with DSI re: HCMS discovery 0.30 695.00 \$208.50 (0.3)06/08/2021 HRW BL Draft R&Os to HCMS discovery (1.5) 1.50 695.00 \$1,042.50 06/08/2021 HRW BL Draft search terms for HCMS document production 1.00 695.00 \$695.00 (1.0)06/09/2021 JNP BL Review of motion to amend answer. 0.10 1295.00 \$129.50 BL Review motion to modify answer and emails 06/09/2021 JNP 0.20 1295.00 \$259.00 regarding same. 06/09/2021 **JMF** BL Review motion for leave to amend answer. 0.30 1050.00 \$315.00

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V2-				Hours	Rate	Amount
2						
06/09/2021	JAM	BL	Review/revise R&Os to HCMS's discovery requests (0.7); e-mails with H. Winograd re: R&Os to HCMS's discovery requests (0.1).	0.80	1245.00	\$996.00
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06/09/2021	LSC	BL	Preparation of document production to HCMS, including redaction of certain documents, and correspondence with H. Winograd regarding the same.	5.70	460.00	\$2,622.00
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		_				
06/09/2021	HRW	BL	Draft R&Os for HCMS discovery demands (4.3)	4.30	695.00	\$2,988.50
06/09/2021	HRW	BL	Communicate with L. Canty re: HCMS document production (0.7)	0.70	695.00	\$486.50
06/09/2021	HRW	BL	Organize and review document production for HCMS (1.3)	1.30	695.00	\$903.50
06/09/2021	HRW	BL	Send HCMS productions in response to document requests (0.2)	0.20	695.00	\$139.00
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06/09/2021	HRW	BL	Communicate with client re: R&OS to HCMS discovery and verification (0.2)	0.20	695.00	\$139.00
06/10/2021	IDK	BL	Office conference with J Morris re upcoming hearing this morning on notes litigation and presentation.	0.30	1325.00	\$397.50

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				<u>Hours</u>	Rate	Amount
			conference with H. Winograd re: subpoena for PwC (0.1); telephone conference with D. Klos re: subpoena for PwC (0.1).			
06/10/2021	LSC	BL	Research in connection with subpoena and correspondence with H. Winograd regarding the same.	0.90	460.00	\$414.00
06/10/2021	LSC	BL	Prepare for and assist at hearing on motion to amend.	3.00	460.00	\$1,380.00
06/10/2021	GVD	BL	Attend hearing on motion to amend notes	2.50	950.00	\$2,375.00
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06/10/2021	HRW	BL	Call with J. Morris re: PwC subpoenas (0.1)	0.10	695.00	\$69.50
06/10/2021	HRW	BL	Call with G. Demo re: HCMFA motion to amend (0.1)	0.10	695.00	\$69.50
06/10/2021	HRW	BL	Review HCMFA motion to amend (1.2)	1.20	695.00	\$834.00
06/10/2021	HRW	BL	Draft opposition to HMCFA motion to amend (0.6)	0.60	695.00	\$417.00
06/10/2021	HRW	BL	Draft document and deposition subpoenas for PwC (2.6)	2.60	695.00	\$1,807.00
06/10/2021	HRW	BL	Call with L. Canty re: PwC subpoenas (0.1)	0.10	695.00	\$69.50
06/10/2021	HRW	BL	Hearing on HCRE/HCMS motion to amend answer (1.0)	1.00	695.00	\$695.00
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				<u>Hours</u>	Rate	Amount
06/11/2021	JNP	BL	Review emails regarding consolidation of notes litigation.	0.10	1295.00	\$129.50
06/11/2021	JNP	BL	Review of response to motion to quash.	0.10	1295.00	\$129.50
06/11/2021	JNP	BL	Conference with J. Seery, Robert J. Feinstein and Gregory V. Demo regarding status of Sentinel matters and next steps.	0.50	1295.00	\$647.50
		W. 142				
06/11/2021	GVD	BL	Conference with J. Morris and H. Winograd re status of HCMFA amended answer	0.50	950.00	\$475.00
06/11/2021	GVD	BL	Correspondence with D. Rukavina re amendments to notes litigation	0.20	950.00	\$190.00
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06/11/2021	HRW	BL	Draft subpoenas and ancillary documents for PwC in connection with HCMS notes litigation (1.6)	1.60	695.00	\$1,112.00
06/11/2021	HRW	BL	Send PwC subpoena to representative of PwC for HCMS notes litigation (0.2)	0.20	695.00	\$139.00
06/11/2021	HRW	BL	Communicate with local counsel and J. Morris re: subpoenas for PwC for HCMS notes litigation (0.6)	0.60	695.00	\$417.00
06/11/2021	HRW	BL	Meeting with client for notarization of ROG verification in connection with HCMS R&Os in notes litigation (0.1)	0.10	695.00	\$69.50

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				<u>Hours</u>	Rate	Amount
06/11/2021	HRW	BL	Communications with client and notary for ROG verification in connection with HCMS R&Os in notes litigation (0.1)	0.10	695.00	\$69.50
06/11/2021	HRW	BL	Send opposing counsel ROG verification for HCMS R&Os in notes litigation (0.1)	0.10	695.00	\$69.50
06/11/2021	HRW	BL	Call with J. Morris and G. Demo re: HCMFA motion to amend answer in notes litigation (0.5)	0.50	695.00	\$347.50
06/11/2021	HRW	BL	Draft 30(b)(6) deposition notices for HCMFA and NPA for notes litigations (0.4)	0.40	695.00	\$278.00
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06/14/2021	JAM	BL	E-mails w/ D. Rukavina re: discovery in the notes litigation against the Advisors (0.3).	0.30	1245.00	\$373.50
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Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

June 30, 2021 36027 - 00002 Hours Rate Amount

Invoice 128195

Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

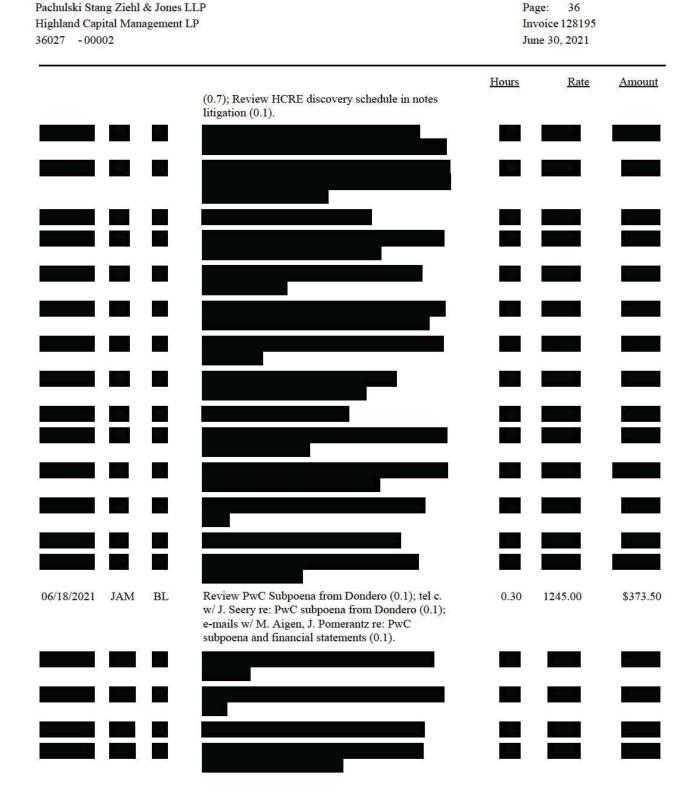
36027 -00002 June 30, 2021 Hours Rate Amount



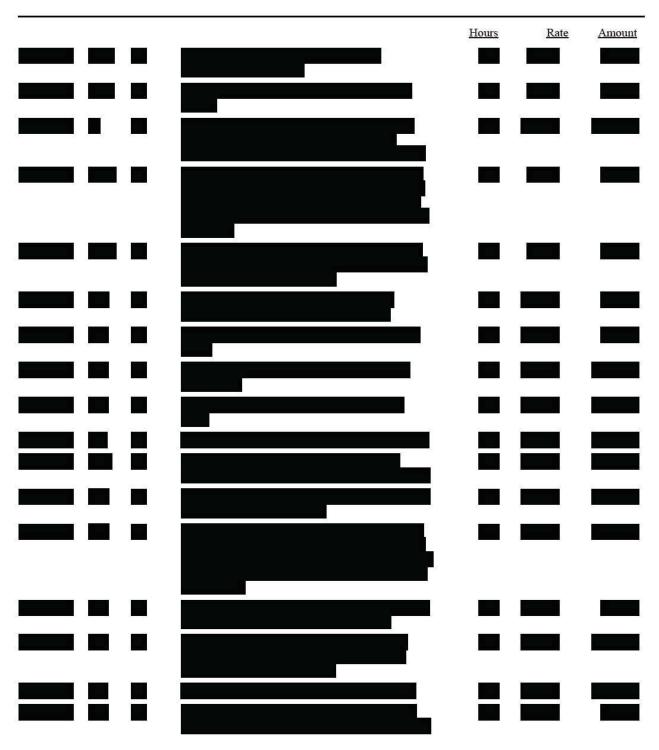








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Invoice 128195

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Highland Capital Management LP

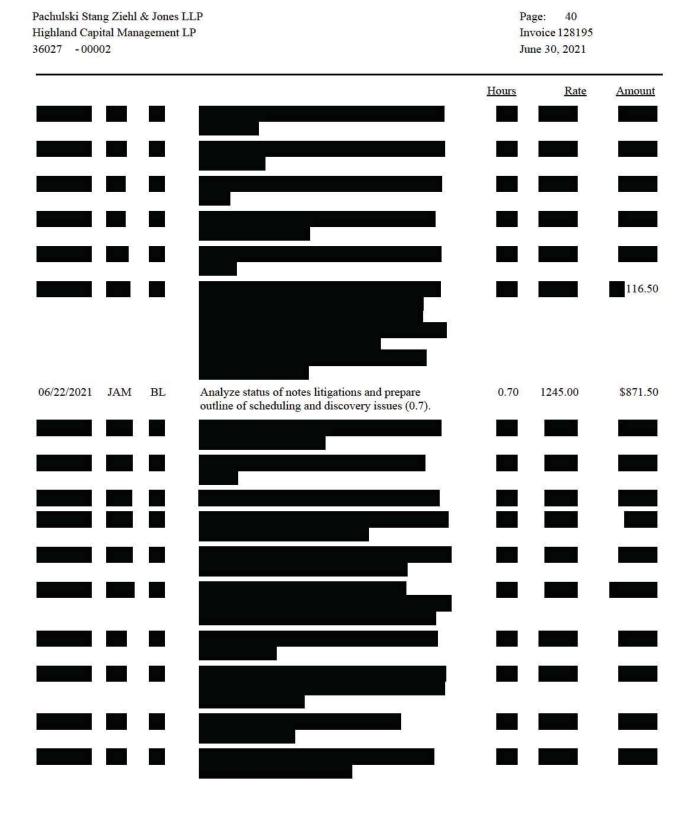
36027 -00002 June 30, 2021 Hours Rate Amount 06/21/2021 JNP BL \$129.50 Email to and from Gregory V. Demo regarding 0.10 1295.00 concerns with note defendant disposing of assets. 06/21/2021 JAM BL Communications w/ M. Aigen, counsel for all 0.30 1245.00 \$373.50 defendants, J. Pomerantz, G. Demo, H. Winograd re: discovery and schedule for notes litigations (0.3).

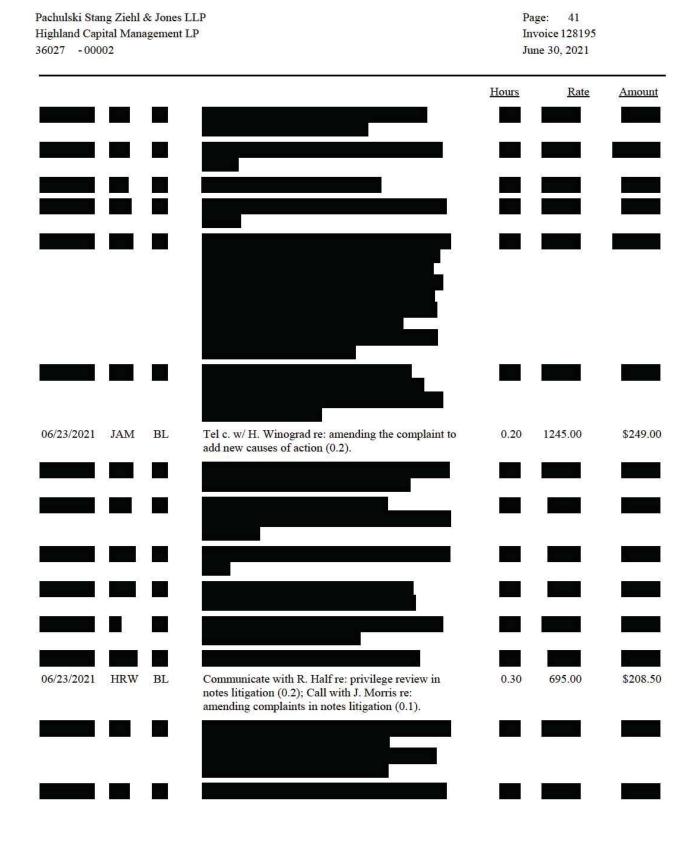
Invoice 128195

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Highland Capital Management LP

36027 - 00002 June 30, 2021 Hours Rate Amount 06/21/2021 HRW BL Communicate with DSI re: HCMFA discovery in 0.70 695.00 \$486.50 notes litigation (0.2); Review HCMFA motion to amend answer (0.2); Draft search terms for HCMFA discovery in notes litigation (0.3).







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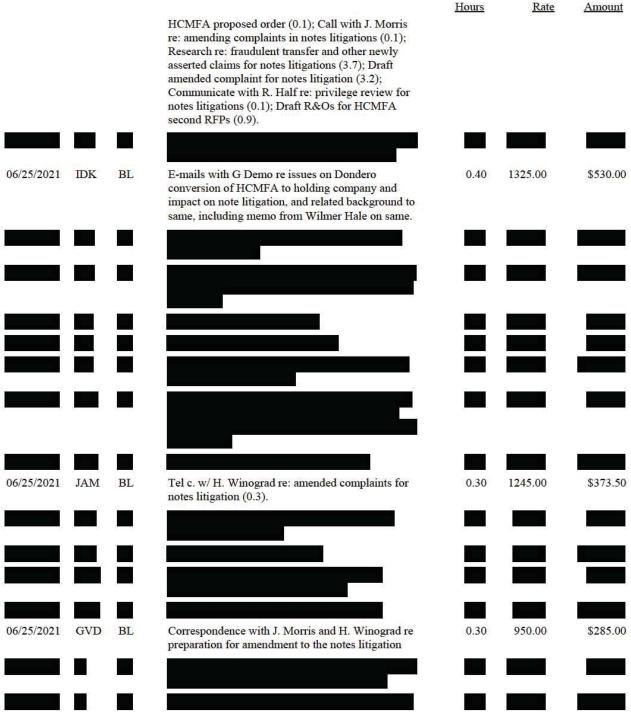
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Invoice 128195

June 30, 2021

Hours

HCMFA proposed order (0.1); Call with J. Morris



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Invoice 128195

Pachulski Stang Ziehl & Jones LLP

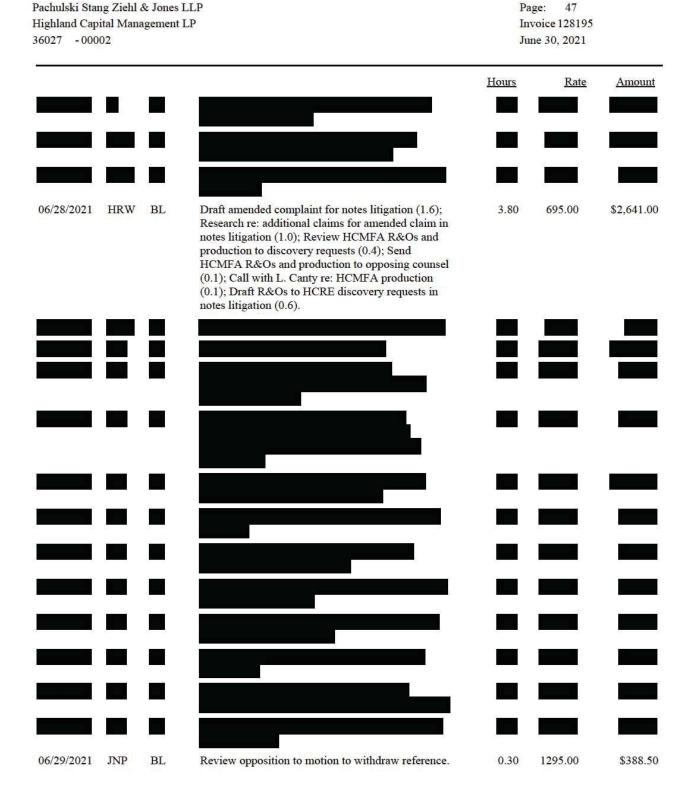
Highland Capital Management LP

36027 -00002 June 30, 2021 Hours Rate Amount 06/25/2021 HRW BL Draft amended complaint for notes litigation (3.8); 6.70 695.00 \$4,656.50 Call with J. Morris re: amended complaints for notes litigation (0.2); Research re: additional claims in notes litigation (2.0); Review HCMFA discovery and production (0.2); Send counsel for HCMFA first production (0.1); Review outstanding litigation critical dates (0.4). 06/27/2021 JAM BL Review/revise draft Amended Complaint against 1.50 1245.00 \$1,867.50 Dondero (1.2); e-mails w/ H. Winograd, G. Demo re: revised Amended Complaint against Dondero (0.3).06/27/2021 HRW BL Draft amended complaint for notes litigation (6.5); 7.50 695.00 \$5,212.50 Research re: additional claims for amended claim in notes litigation (1.0).

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Highland Capital Management LP

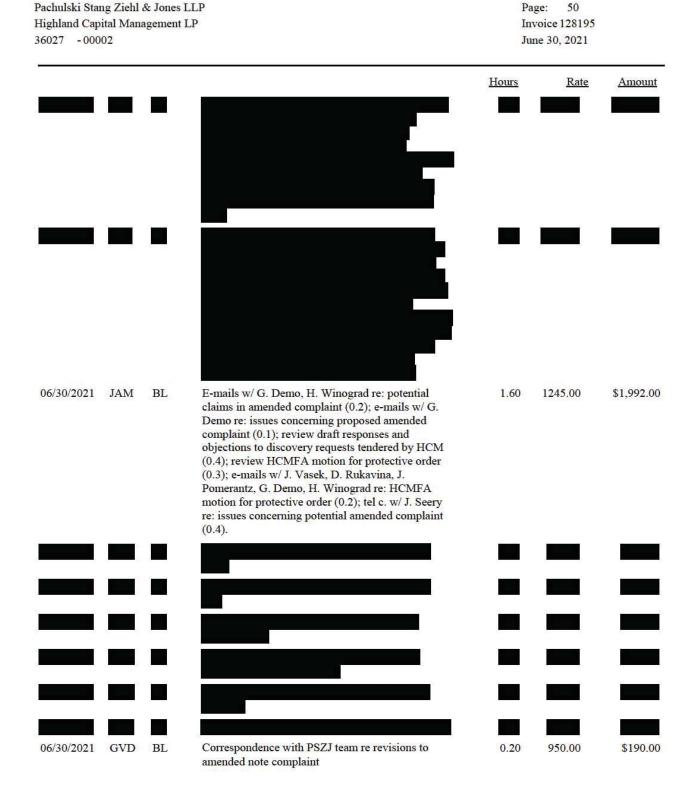
36027 -00002 June 30, 2021 Hours Rate Amount 06/29/2021 GVD BL Correspondence with PSZJ working group re notes 0.20 950.00 \$190.00 litigation 06/29/2021 GVD BL Review amended notes complaint 0.90 950.00 \$855.00

Invoice 128195

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Highland Capital Management LP

36027 - 00002 June 30, 2021 Hours Rate Amount 06/29/2021 HRW BL Research re: amended complaint for notes litigations 3.10 695.00 \$2,154.50 (1.2); Review amended complaint re: notes litigations (0.5); Draft R&Os for HCRE discovery requests in notes litigation (1.4).



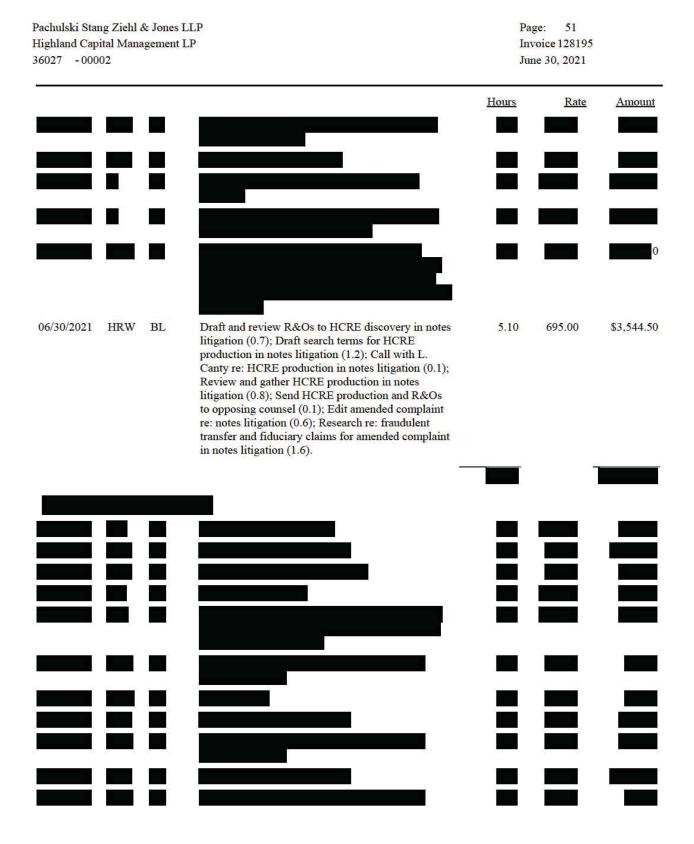


EXHIBIT 176

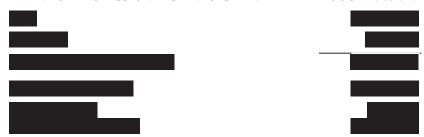
Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd. 13th Floor Los Angeles, CA 90067

Board of Directors Highland Capital Management LP 300 Crescent Court ste. 700 Dallas, TX 75201 July 31, 2021 Invoice 128292 Client 36027 Matter 00002 JNP

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 07/31/2021



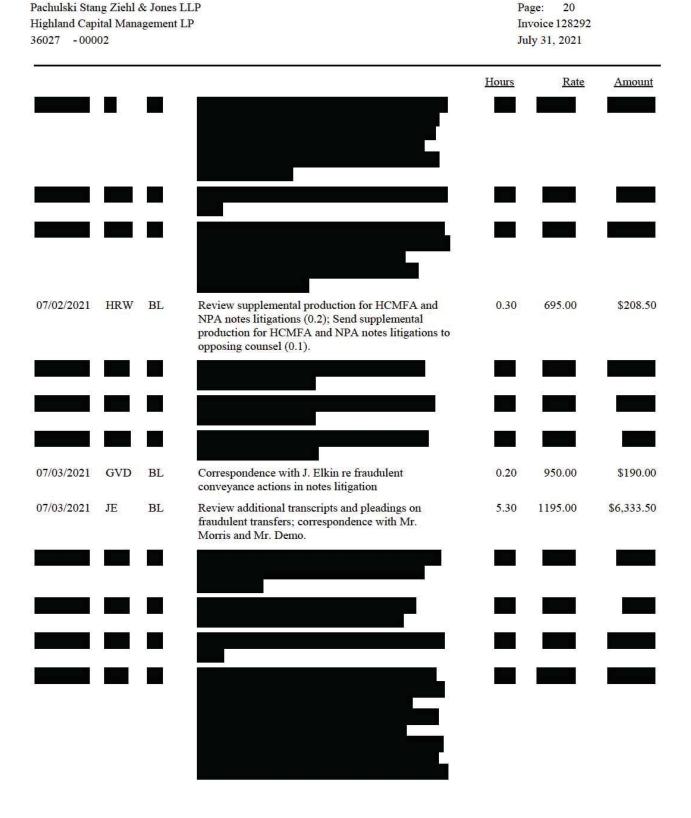
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Pachulski Stang Ziehl & Jones LLP

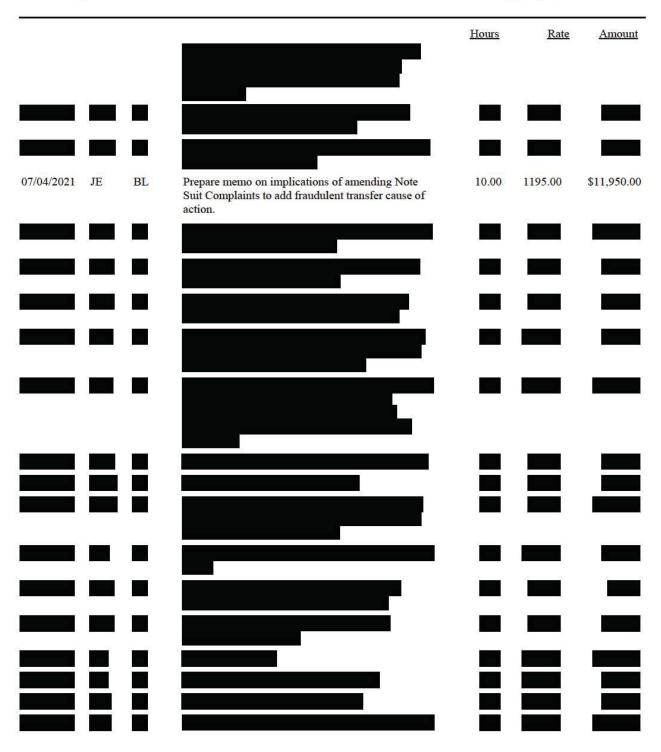
Highland Capital Management LP Invoice 128292 36027 -00002 July 31, 2021 Hours Rate Amount 07/01/2021 JAM BL Further revisions to draft Amended Complaint (0.4); 0.60 \$747.00 1245.00 e-mails w/ G. Demo, H. Winograd, J. Pomerantz re: revisions to draft Amended Complaint (0.2). 950.00 \$380.00 07/01/2021 GVD BL Review revisions to letter re conflicts of interest 0.40 07/01/2021 GVD BL Review amended complaint re notes litigation and 0.30 950.00 \$285.00 correspondence re same

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3				Hours	Rate	Amount
07/01/2021	HRW	BL	Edit and review amended complaint for notes litigation (0.6); Assist client re: verification for HCRE interrogatories in notes litigation (0.1); Review supplemental production for HCMFA and NPA notes litigations (0.1); Send verification for HCRE interrogatories to opposing counsel in notes litigation (0.1).	0.90	695.00	\$625.50
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32				Hours	Rate	Amount
0						
07/07/2021	JNP	BL	Review Bankruptcy Court report and recommendation to District Court regarding withdrawal of reference.	0.10	1295.00	\$129.50
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07/07/2021	JMF	BL	Review report and recommendations re notes adversary proceedings.	0.60	1050.00	\$630.00
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07/07/2021	JAM	BL	E-mails w/ D. Rukavina re: proposed amended complaint (0.2).	0.20	1245.00	\$249.00
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Invoice 128292

Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

36027 -00002 July 31, 2021 Hours Rate Amount 07/08/2021 JNP BL Participate in hearing on motion to amend and 0.20 \$259.00 1295.00 motion to stay notes actions. 07/08/2021 JNP BL Conference with J. Dubel regarding hearing on notes 0.20 1295.00 \$259.00 litigation. 07/08/2021 JAM BL Court hearing on HCRE/HCMS motions to 0.90 1245.00 \$1,120.50 withdraw the reference and related matters (0.8); tel c. w/ J. Pomerantz re: court hearing (0.1).

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				Hours	Rate	Amount
8						
07/08/2021	JE	BL	Review certain documents relating to note suits (.5); call with Mr. Pomerantz, Mr. Morris and Mr. Demo regarding reference issues, preference issues and jury trials (.4).	0.90	1195.00	\$1,075.50
07/08/2021	HRW	BL	Send production to counsel for HCRE (0.1).	0.10	695.00	\$69.50
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Invoice 128292

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Highland Capital Management LP

36027 -00002 July 31, 2021 Hours Rate Amount 07/09/2021 JAM BL Review M. Aigen e-mail re: notes litigation and 0.10 1245.00 \$124.50 discovery (0.1).

Invoice 128292

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Highland Capital Management LP

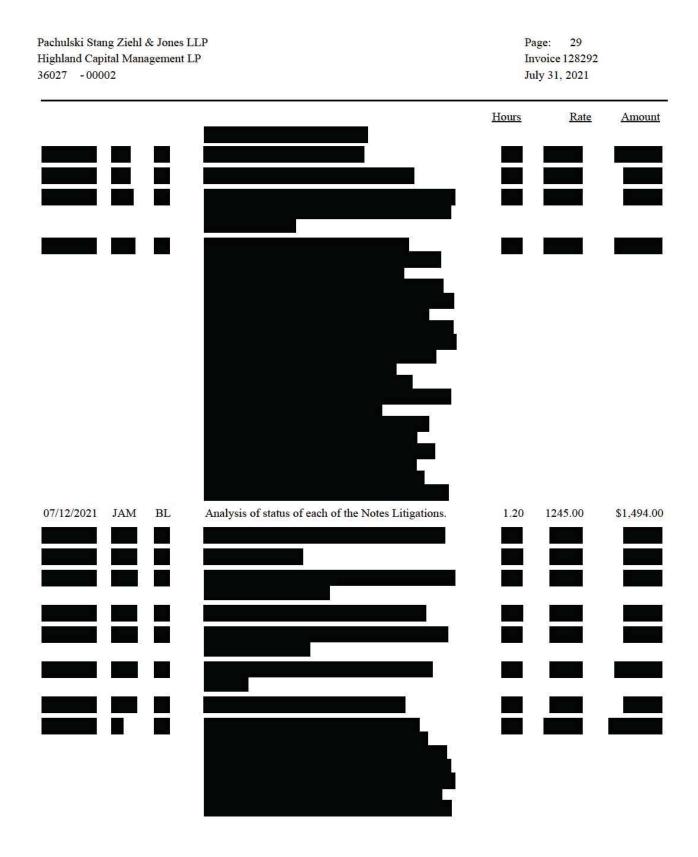
36027 -00002 July 31, 2021 Hours Rate Amount 07/11/2021 JAM BL Work on Amended Complaints in notes litigation 2.30 1245.00 \$2,863.50 (2.2); e-mails w/ D. Rukavina re: NexPoint amended

Invoice 128292

Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

36027 -00002 July 31, 2021 Hours Rate Amount answer (0.1).



Invoice 128292

Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

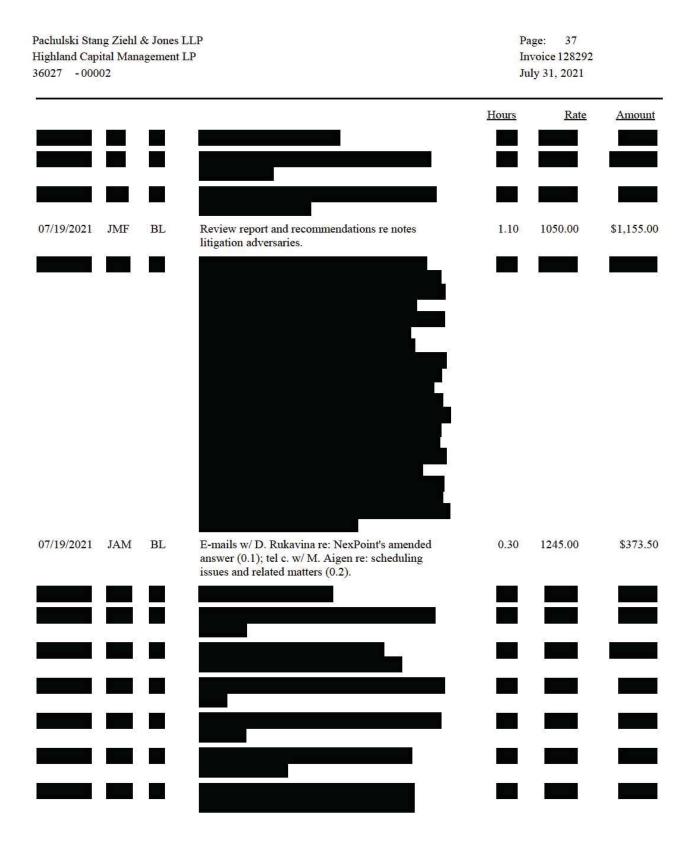
36027 -00002 July 31, 2021 Rate Hours Amount 07/13/2021 JNP BL Conference with John A. Morris regarding notes 0.20 1295.00 \$259.00 litigation and defenses.

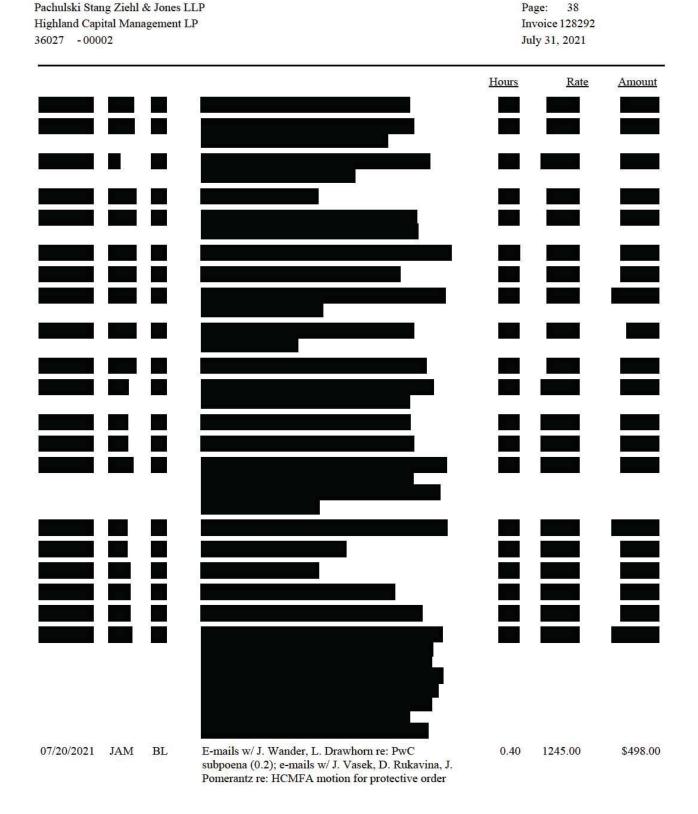
Page: 31 Invoice 128292 July 31, 2021

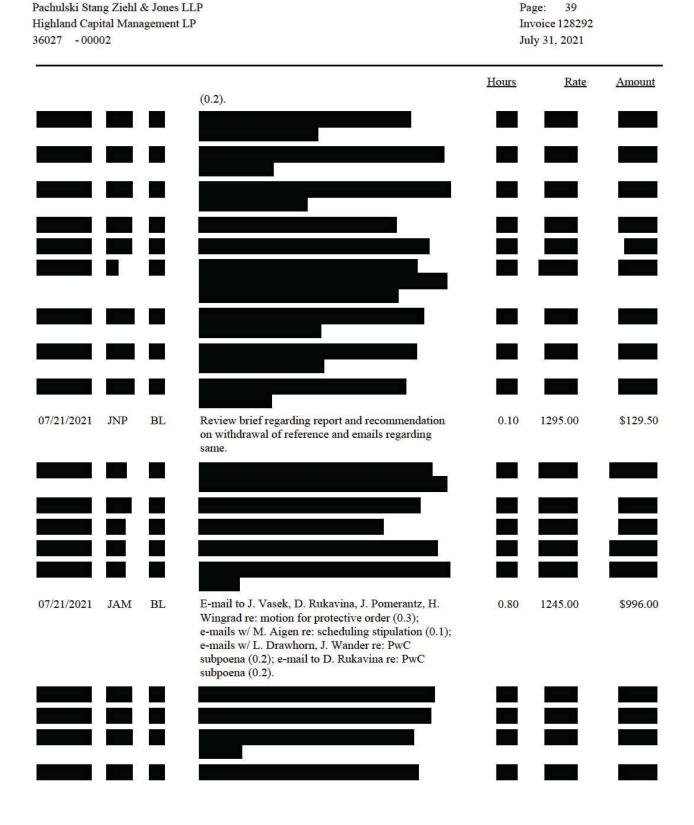
				Hours	Rate	Amount
07/13/2021	JAM	BL	E-mail to D. Rukavina re: NexPoint amended answer (0.2); e-mails w/ D. Klos, J. Seery re: HCMFA amended answer (0.2); review revise draft Amended Complaint for Dondero (0.4); review/revise draft Amended Complaint for HCMFA (0.9); review/revise draft Amended Complaint for NexPoint (0.9); review/revise draft Amended Complaint for HCRE (0.9); review/revise draft Amended Complaint for HCM Services, Inc. (0.9); draft e-mail to M. Aigen and other defense counsel re: schedule and related matters (0.6); e-mail to J. Seery re: amended complaints and HCMFA (0.2); tel c. w/ J. Seery re: HCMFA proposed amended complaint (0.2); e-mail to M. Aigen and other defense counsel, J. Pomerantz, G Demo re: Amended Complaints (0.1).	5.50	1245.00	\$6,847.50
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Invoice 128292

July 31, 2021

Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

36027 -00002

				Hours	Rate	Amount
07/23/2021	IDK	BL	E-mails with local counsel, J. Pomerantz re issues on Dondero entities objections in District Court to Report & Recommendations and procedural issues on same and opposition to motion to strike, including review of rules (.5); E-mails with J. Pomerantz and J. Morris re same and need for draft motion to strike (.3).	0.80	1325.00	\$1,060.00
07/23/2021	JNP	BL	Review and respond to email regarding stipulation to consolidate notes matters and open issues.	0.10	1295.00	\$129.50
07/23/2021	JAM	BL	E-mails w/ J. Wander, L. Drawhorn, D. Rukavina re:	1.40	1245.00	\$1,743.00
			PwC subpoena, document production, and deposition (0.4); prepare Notices of Deposition (PwC) for each of the five adversary proceedings (including revisions based on comments received) (0.8); e-mail to Z. Annable re: PwC subpoena and Notices of Deposition (0.2).			
				_		
					6	
07/24/2021	IDK	BL	E-mails and telephone conference with J. Pomerantz re Dondero objection to R&R and need for motion to strike (.4); E-mails with J.Kim re same and relevant background (.3); E-mails with G Demo re same and related docs (.2).	0.90	1325.00	\$1,192.50

Invoice 128292

Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

36027 -00002 July 31, 2021 Hours Rate Amount 07/26/2021 IDK BL Review and consider J Kim draft motion to strike 0.90 1325.00 \$1,192.50 Dondero objection to report and rec, as well as his summary of caselaw (.5); E-mail J Pomerantz re timing on same (.1); E-mails with attorneys re problems on filing motion to strike same and issues on procedure re District Court for same (.3). 07/26/2021 IDK BL E-mail local counsel re District Court order adopting 0.20 1325.00 \$265.00 R&R of Judge Jurnigan re HCM Services and review of same.

Invoice 128292

Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

36027 -00002 July 31, 2021 Hours Rate Amount 07/26/2021 JNP BL Review and respond to email regarding motion to 0.10 1295.00 \$129.50 strike objection to report and recommendation regarding withdrawal of reference. 07/26/2021 RJF BL Review draft motion to strike objection to reference 1395.00 \$558.00 report and related emails. 07/26/2021 JAM Review/analyze HCMLP's audited financials from 2.00 1245.00 \$2,490.00 BL2008 to 2016 (1.8); e-mail to J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: production of audited financials (0.2).

Invoice 128292

Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

36027 -00002 July 31, 2021 Hours Rate Amount 07/27/2021 IDK BL 0.20 1325.00 \$265.00 E-mails with J Kim re decision to file response to Dondero objection to R&R vs motion to strike. E-mails w/ J. Seery, L. Canty, M. Aigen re: audited 07/27/2021 JAM BL 0.30 1245.00 \$373.50 financial statements (0.3).

0.10

0.50

0.60

695.00

695.00

695.00

Pachulski Stang Ziehl & Jones LLP

07/29/2021

07/29/2021

07/29/2021 HRW

HRW BL

BL

BL

HRW

Highland Capital Management LP Invoice 128292 36027 -00002 July 31, 2021 Amount Hours Rate 07/29/2021 JMF BL Review notes adversary proceedings district and 2.10 1050.00 \$2,205.00 bankruptcy dockets and draft memorandum re pending issues and status re same. 07/29/2021 JAM BL 1.40 Review audited financial statements and prepare for 1245.00 \$1,743.00 PwC deposition (1.1); e-mails w/ M. Aigen, L. Canty re: PwC financial statements (0.2); e-mails w/ L. Drawhorn, J. Seery re: Wick Phillips proposed withdrawal from notes litigation (0.1).

Send production to opposing counsel for notes

Review and edit chart of District Court proceedings

Review objections to R&Rs issued in notes

litigation (0.1).

litigations (0.5).

for notes litigations (0.6).

\$69.50

\$347.50

\$417.00

Invoice 128292

Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

36027 -00002 July 31, 2021 Hours Rate Amount 07/30/2021 JNP BL Email to and from Jonathan J. Kim regarding status 0.20 1295.00 \$259.00 of reports and recommendations in connection with motion to withdraw reference. 07/30/2021 JAM BL E-mail to L. Lambert, M. Clemente, J. Pomerantz re: 6.50 1245.00 \$8,092.50 Advisors' motion for protective order (0.2); prepare for PwC deposition (4.3); PwC deposition (2.0). 07/30/2021 HRW BL Review pleadings in District Court notes litigations 1.00 695.00 \$695.00 (1.0).07/30/2021 HRW BL Review deadlines for District Court notes litigations 0.50 695.00 \$347.50 07/30/2021 HRW BL Deposition of Peet Burger for notes litigations (2.0). 2.00 695.00 \$1,390.00

EXHIBIT 177

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd. 13th Floor Los Angeles, CA 90067

Board of Directors Highland Capital Management LP 300 Crescent Court ste. 700 Dallas, TX 75201

August 31, 2021 Invoice 128567 Client 36027 Matter 00003 JNP

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 08/31/2021



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Notes Liti	igation					
08/11/2021	JJK	NL	Prepare HCM objection to motion to reconsider.	4.20	995.00	\$4,179.00
08/11/2021	JAM	NL	Review stipulations for each adversary proceeding (0.4); e-mails w/ M. Aigen re: scheduling stipulations (0.1).	0.50	1245.00	\$622.50
08/11/2021	HRW	NL	Draft motion to file amended complaints for notes litigations (2.8)	2.80	695.00	\$1,946.00
08/12/2021	JJK	NL	Research and prepare replies re: Reports, motions to reconsider; emails Kharasch on same.	5.20	995.00	\$5,174.00
08/12/2021	LSC	NL	Retrieve and transmit Reports and Recommendations regarding notes litigations for J. Morris.	0.30	460.00	\$138.00
08/12/2021	HRW	NL	Draft motion to file amended complaints for notes litigations (3.0)	3.00	695.00	\$2,085.00
08/13/2021	IDK	NL	E-mail H Winograd re updated litigation WIP list with focus on deadlines re matters on Dondero entities motions for withdrawal of reference.	0.20	1325.00	\$265.00
08/13/2021	IDK	NL	E-mail J Kim re draft of response to HCMS motion to reconsider to D Court, including review of same and new argument.	0.40	1325.00	\$530.00
08/13/2021	JAM	NL	Review motion to amend complaint and proposed orders (0.9); e-mails w/ G. Demo, H. Winograd remotion to amend complaint and proposed orders (0.2); e-mails w/ M. Aigen, others, rescheduling order and motion to amend complaints (0.4).	1.50	1245.00	\$1,867.50
08/13/2021	GVD	NL	Review open issues re notes litigation and correspondence with H. Winograd re same	0.40	950.00	\$380.00
08/13/2021	HRW	NL	Edit and finalize motions to file amended complaints in notes litigations (1.2).	1.20	695.00	\$834.00
08/16/2021	IDK	NL	Review and consider revised response to HCMS motion to reconsider R&R (.3); E-mails with J Pomerantz re same and Texas litigation counsel (.2); E-mails with J Kim re my feedback on draft of same and timing for filing today (.2).	0.70	1325.00	\$927.50
08/16/2021	JJK	NL	Emails Kharasch, Pomerantz on motions to reconsider; related research and final revisions to last reply re: Reports.	1.50	995.00	\$1,492.50
08/16/2021	JNP	NL	Review response to motion for reconsideration of	0.10	1295.00	\$129.50

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				<u>Hours</u>	Rate	Amount
			order adopting report and recommendations.			
08/17/2021	JAM	NL	Review/revise motions for leave to amend complaints in Notes Litigation (1.1); e-mail to L. Canty, Z. Annable, H. Winograd re: motions for leave to amend complaints in Notes Litigation and related matters (0.2); e-mails w/ Z. Annable, H. Winograd re: motions to amend complaints in Notes Litigation (0.1).	1.40	1245.00	\$1,743.00
08/17/2021	LSC	NL	Prepare and transmit exhibits to motions to amend.	0.50	460.00	\$230.00
08/18/2021	JAM	NL	Communications w/ M. Aigen, Z. Annable re: form of Order for motions for leave to amend complaints (0.2); tel c. w/ D. Rukavina re: Advisors' motion for protective order (0.2).	0.40	1245.00	\$498.00
08/18/2021	LSC	NL	Transmit proposed orders on motions to amend.	0.20	460.00	\$92.00
08/19/2021	JAM	NL	Revise Advisors' draft Stipulation resolving their motion for a protective order (0.5); draft e-mail to D. Rukavina re: revised Stipulation resolving Advisors' motion for a protective order (0.2).	0.70	1245.00	\$871.50
08/20/2021	JNP	NL	Conference with John A. Morris regarding protective order regarding notes litigation.	0.20	1295.00	\$259.00
08/20/2021	JAM	NL	E-mails w/ D. Rukavina re: proposed settlement of motion for protective order (0.1); e-mails w/ J. Seery, J. Pomerantz, G. Demo re: Advisors' motion for a protective order (0.1).	0.20	1245.00	\$249.00
08/24/2021	HRW	NL	Draft notice of filing stipulations re: notes litigation (2.2).	2.20	695.00	\$1,529.00
08/25/2021	JAM	NL	E-mails w/ H. Winograd re: HCMFA scheduling stipulation (0.1) .	0.10	1245.00	\$124.50
08/25/2021	HRW	NL	Draft proposed orders re: notes litigation (2.5); Communicate with opposing counsel for HCMFA re: notes stipulation (0.1).	2.60	695.00	\$1,807.00
08/26/2021	JAM	NL	E-mails w/ H. Winograd, Z. Annable re: filing of Amended Complaints (0.2); e-mails w/ H. Winograd, D. Rukavina re: scheduling order for HCMFA notes litigation (not subject to amended complaint) (0.2).	0.40	1245.00	\$498.00
08/26/2021	LSC	NL	Prepare exhibits to amended complaints (.7); prepare exhibits to orders approving discovery stipulations (.3).	1.00	460.00	\$460.00
08/26/2021	HRW	NL	Prepare and review amended complaints and	1.70	695.00	\$1,181.50

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				Hours	Rate	Amount
			exhibits for notes litigations filings (1.5); Communicate with opposing counsel for Advisors re: discovery stipulations (0.1); Review discovery stipulations for notes litigations (0.1).			
08/27/2021	JAM	NL	E-mails w/ D. Rukavina, M. Aigen re: timing of answers and discovery demands (0.1); e-mails w/ Z. Annable re: filing of amended answers and orders approving scheduling stipulations (0.2).	0.30	1245.00	\$373.50
08/27/2021	HRW	NL	Review adversary cover sheets for notes litigations (0.2); Review and prepare discovery stipulations and proposed orders for notes litigations (1.0).	1.20	695.00	\$834.00
08/29/2021	JMF	NL	Review amended complaints re notes litigation.	0.30	1050.00	\$315.00
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EXHIBIT 178

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd. 13th Floor Los Angeles, CA 90067

Board of Directors Highland Capital Management LP 300 Crescent Court ste. 700

Dallas, TX 75201

August 10, 2021 Invoice 128474 Client 36027 Matter 00002 **JNP**

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 08/10/2021

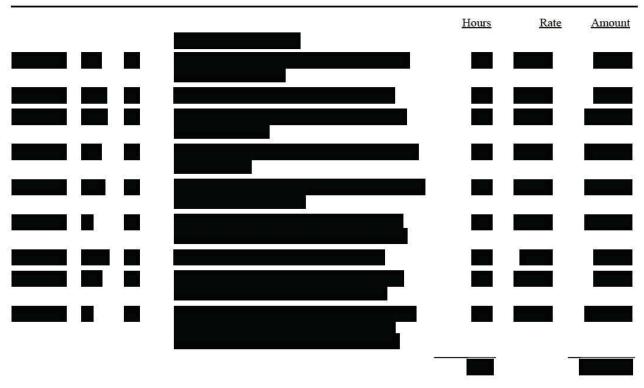


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1245.00

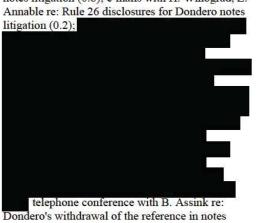
\$5,976.00



Bankruptcy Litigation [L430]

04/15/2021 JAM BL

Review/revise Rule 26 disclosures for Dondero notes litigation (0.8); e-mails with H. Winograd, Z. Annable re: Rule 26 disclosures for Dondero notes litigation (0.2):



Dondero's withdrawal of the reference in notes litigation and related matters (0.1); telephone conference with J. Pomerantz re: Dondero's withdrawal of the reference in notes litigation and related matters (0.1);



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				<u>Hours</u>	Rate	Amount
			production and search issues.			
05/25/2021	CHM	BL	Emails with J. Morris and B. Sharp re document production.	0.30	750.00	\$225.00
05/26/2021	CHM	BL	Prepare Nexpoint document production and check document being produced; email H. Winograd re same.	3.20	750.00	\$2,400.00
05/26/2021	CHM	BL	Review email from H. Winograd re RFPs and reply.	0.10	750.00	\$75.00
05/27/2021	CHM	BL	Review requests for production and documents being produced and search terms run for completeness.	4.00	750.00	\$3,000.00
05/27/2021	CHM	BL	Review search terms and exchange emails with H. Winograd and IDS team re new production searches.	1.10	750.00	\$825.00
05/28/2021	CHM	BL	Review email from J. Vaughn and reply.	0.10	750.00	\$75.00
05/28/2021	CHM	BL	Run document production and review of documents being produced.	1.80	750.00	\$1,350.00
06/02/2021	CHM	BL	Review document production issues and coordinate with IDS team re same.	0.30	750.00	\$225.00
06/02/2021	CHM	BL	Email H. Winograd re document production issues.	0.10	750.00	\$75.00
06/03/2021	CHM	BL	Review RFPs and coordinate searches with IDS team; review document hits re same.	3.20	750.00	\$2,400.00
06/04/2021	CHM	BL	Review UDF documents for responsiveness and run production re same.	4.30	750.00	\$3,225.00
06/07/2021	CHM	BL	Review email from B. Sharp and reply.	0.10	750.00	\$75.00
06/07/2021	CHM	BL	Review RFPs and proposed search terms; email IDS team re same and review results.	2.50	750.00	\$1,875.00
06/09/2021	CHM	BL	Correspond with G. Crane and H. Winograd re privilege review and begin preparation of privilege assignments.	3.00	750.00	\$2,250.00
06/09/2021	CHM	BL	Review documents for responsiveness and run production.	3.70	750.00	\$2,775.00
06/09/2021	CHM	BL	Email IDS team re additional searches.	0.20	750.00	\$150.00
06/10/2021	CHM	BL	Review parties list and update privilege breaker list and email same to G. Demo.	1.80	750.00	\$1,350.00
06/10/2021	CHM	BL	Review email from J. Sommer re UDF privilege holdback and reply.	0.10	750.00	\$75.00
06/11/2021	CHM	BL	Review documents flagged by G. Crane and reply re same.	0.30	750.00	\$225.00
06/11/2021	JAM	BL	Telephone conference with G. Demo, H. Winograd re: HCMFA and NexPoint motions to amend (0.5);	1.80	1245.00	\$2,241.00

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				Hours	Rate	Amount
			telephone conference with J. Seery re: HCMFA and NexPoint motion to amend (0.1); e-mail to D. Rukavina, J. Vasek, J. Pomerantz, G. Demo, H. Winograd re: proposed amended complaints for HCMFA and NexPoint in notes litigation (0.4); e-mail to D. Rukavina, J. Vasek, J. Pomerantz, G. Demo, H. Winograd re: Rule 30(b)(6) notices in notes litigation (0.2); review/revise subpoena for PwC for HCMFA and NexPoint notes litigation (0.3); communications w/ H. Winograd, Z. Annable re: substance of PwC subpoena and issues concerning service (0.3).			
06/12/2021	CHM	BL	Review email from J. Morris re G. Crane privilege review and reply.	0.10	750.00	\$75.00
06/15/2021	CHM	BL	Review email from G. Crane re privilege review and reply.	0.10	750.00	\$75.00
06/15/2021	CHM	BL	Create and update privilege review assignments and email G. Crane re same.	1.00	750.00	\$750.00
06/15/2021	CHM	BL	Review discovery and deadline tracker and update; coordinate with H. Winograd re next priority.	0.50	750.00	\$375.00
06/15/2021	CHM	BL	Emails with G. Crane re parameters of privilege review and RFPs for responsiveness review.	0.20	750.00	\$150.00
06/15/2021	CHM	BL	Review G. Crane privilege tagging re HCMS production; email H. Winograd re same.	0.80	750.00	\$600.00
06/16/2021	CHM	BL	Emails with J. Morris, G. Demo and IDS team re additional custodian collection.	0.20	750.00	\$150.00
06/21/2021	CHM	BL	Review RFP and proposed search terms and coordinate searches with IDS team.	0.50	750.00	\$375.00
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06/22/2021	CHM	BL	Exchange emails with IDS team re requested searches.	0.10	750.00	\$75.00

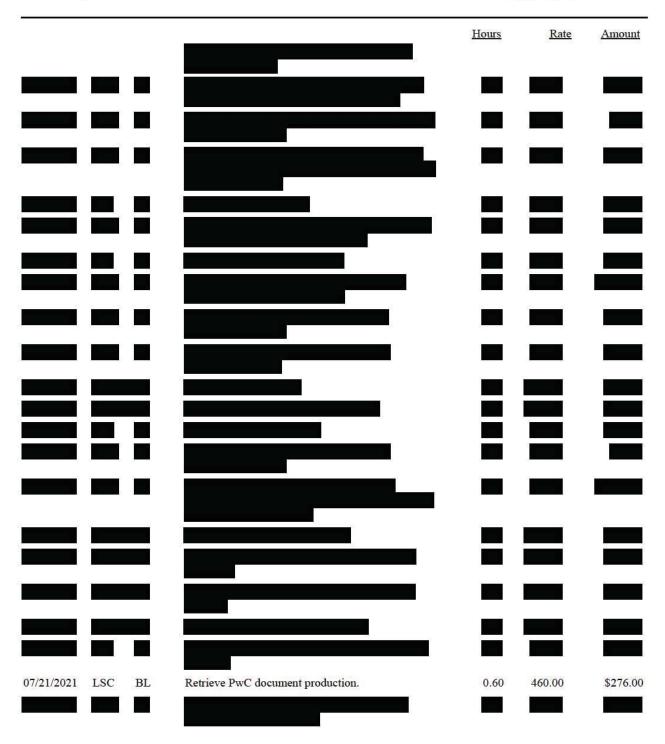
Page: 13 Invoice 128474 August 10, 2021

				<u>Hours</u>	Rate	Amount
06/23/2021	CHM	BL	Review email from H. Winograd re HCMFA document searches and reply.	0.10	750.00	\$75.00
06/23/2021	CHM	BL	Review RFP and coordinate additional searches with IDS team.	0.50	750.00	\$375.00
06/24/2021	CHM	BL	Review email from G. Crane re coding issues; review database and impacted documents.	0.60	750.00	\$450.00
06/24/2021	CHM	BL	Draft email to IDS team re pending documents.	0.40	750.00	\$300.00
06/24/2021	CHM	BL	Review documents for responsiveness and run production re first portion of HCMFA documents.	3.90	750.00	\$2,925.00
06/28/2021	CHM	BL	Review email from G. Crane re review status and reply.	0.10	750.00	\$75.00
06/28/2021	CHM	BL	Review documents for responsiveness and run production re 2nd set of HCMFA requests.	3.50	750.00	\$2,625.00
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		Br 50		5.		
07/01/2021	CHM	BL	Email G. Crane re privilege review; review UDF privileged documents.	1.10	750.00	\$825.00
07/01/2021	CHM	BL	Review RFPs, run preliminary searches in existing database and email IDS re HCRE search terms.	0.60	750.00	\$450.00
	55					
07/01/2021	LSC	BL	Prepare supplemental HCMFA production.	0.30	460.00	\$138.00
07/01/2021	LSC	BL	Preparation of NPA supplemental production.	0.30	460.00	\$138.00
7/02/2021	CHM	BL	Draft email to IDS team re privilege filter issue.	0.30	750.00	\$225.00
7/02/2021	CHM	BL	Review prior productions re privilege filter issues.	3.30	750.00	\$2,475.00
7/						
07/06/2021	CHM	BL	Review email from IDS re UBS results and reply.	0.10	750.00	\$75.00

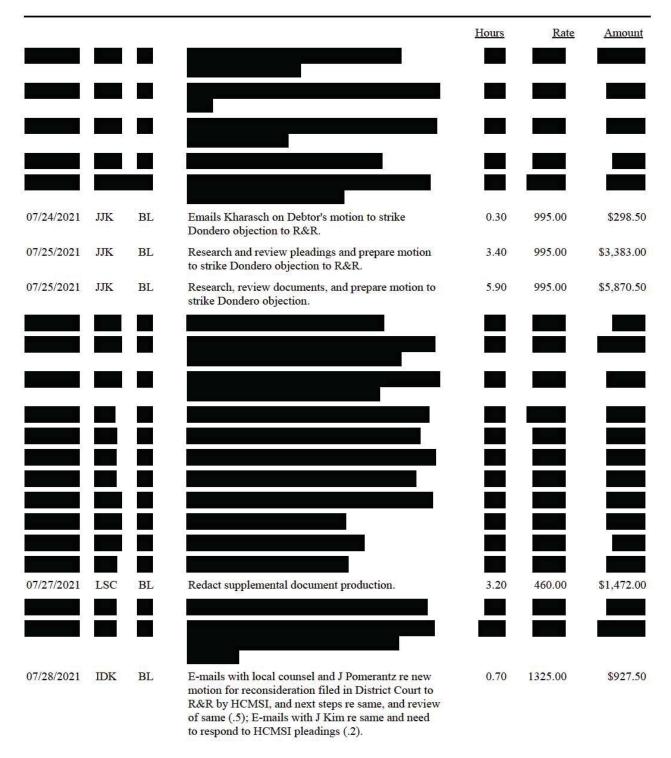
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				<u>Hours</u>	Rate	Amount
07/06/2021	LSC	BL	Research and correspondence regarding privileged documents and supplemental document production.	0.90	460.00	\$414.00
07/07/2021	LAF	BL	Legal research re: Withdrawal of reference; update chart of rules/general orders in various districts.	3.30	475.00	\$1,567.50
07/08/2021	CHM	BL	Review HCRE search results and email IDS re same.	1.80	750.00	\$1,350.00
07/08/2021	CHM	BL	Run production re HCRE search results and review same; email link to H. Winograd.	2.00	750.00	\$1,500.00
07/08/2021	CHM	BL	Review email from K. Kim re privilege filter and reply.	0.10	750.00	\$75.00
07/08/2021	LSC	BL	Retrieve and review HCRE document production.	1.70	460.00	\$782.00
07/09/2021	CHM	BL	Review search results and begin production of certain UBS documents.	5.00	750.00	\$3,750.00
55						
07/12/2021	LSC	BL	Circulate responses to Court's order requiring disclosures and correspondence regarding the same.	0.30	460.00	\$138.00
07/12/2021	LSC	BL	Review Dondero designation, related documents and correspondence with J. Morris regarding same.	0.50	460.00	\$230.00
07/15/2021	JEO	BL	Review court ordered disclosures	1.00	1050.00	\$1,050.00
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Pachulski Stang Ziehl & Jones LLP	Page: 17
Highland Capital Management LP	Invoice 128474
36027 -00002	August 10, 2021

				<u>Hours</u>	Rate	Amount
07/28/2021	IDK	BL	Review of District Court order adopting R&R of Judge Jurnigan re NexPoint Advisors and its objection to the R&R (.2); E-mails with J Kim re same (.2).	0.40	1325.00	\$530.00
07/28/2021	JJK	BL	Emails Kharasch on multiple replies/objections re: reference withdrawal and consider same.	0.20	995.00	\$199.00
07/28/2021	JJK	BL	Research, analysis, pleading review to prepare multiple replies re: reference withdrawal.	5.00	995.00	\$4,975.00
07/29/2021	IDK	BL	E-mails with J Kim, others on the status of the 5 objections/motions for reconsideration to bankruptcy court R&R to District Court and issues on our various responses to same (.4); E-mails with H Winograd and J Fried re same and re deadlines to same and updated chart (.2).	0.60	1325.00	\$795.00
07/29/2021	JJK	BL	Research and prepare replies to Dondero, et al. re: bankruptcy court reports.	3.90	995.00	\$3,880.50
07/29/2021	JJK	BL	Review pleadings, research, and prepare replies to Dondero, et al., re: bankruptcy court reports.	4.50	995.00	\$4,477.50
07/29/2021	JEO	BL	Email follow up on critical dates issue regarding deposition scheduling	0.20	1050.00	\$210.00
07/29/2021	RJF	BL	Prepare for Ellington deposition, including review of exhibits.	0.50	1395.00	\$697.50
07/29/2021	RJF	BL	Attend Ellington deposition.	10.00	1395.00	\$13,950.00
07/29/2021	LSC	BL	Prepare for Burger deposition.	0.70	460.00	\$322.00
07/29/2021	LSC	BL	Preparation of Consolidated Notes Litigation Production.	2.40	460.00	\$1,104.00
07/30/2021	CHM	BL	Email correspondence re non-email document collection.	0.50	750.00	\$375.00
07/30/2021	CHM	BL	Email IDS team re Surgent screenshot.	0.10	750.00	\$75.00

Invoice 128474

Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

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			<u>Hours</u>	Rate	Amount
IDK	BL	E-mails with J Kim, others on status/issues on the 5 Dondero related motions to withdraw the reference and response status/drafts (.4); E-mails with local counsel, H Winograd on updates to timing on filing responses to same (.1).	0.50	1325.00	\$662.50
JJK	BL	Research and prepare replies/objections to Dondero, et al. re: bankruptcy court reports.	5.70	995.00	\$5,671.50
RJF	BL	Emails regarding reference reports.	0.20	1395.00	\$279.00
LSC	BL	Prepare for and assist at deposition of Peet Burger.	3.00	460.00	\$1,380.00
IDK	BL	Review of correspondence to Texas litigation specialists on various questions on motions to withdraw reference and related objections to R&R.	0.20	1325.00	\$265.00
JJK	BL	Research, prepare replies/objections re: bankruptcy court's reports & recommendations.	5.50	995.00	\$5,472.50
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JJK	BL	Research, review documents, and prepare replies to objections to reports/recommendations and opposition to motion to reconsider.	5.20	995.00	\$5,174.00
JJK	BL	Prepare replies to objections to reports/recommendations and motion to reconsider.	3.60	995.00	\$3,582.00
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	IDK JJK RJF LSC IDK JJK JJK	IDK BL JJK BL RJF BL LSC BL IDK BL JJK BL	IDK BL E-mails with J Kim, others on status/issues on the 5 Dondero related motions to withdraw the reference and response status/drafts (.4); E-mails with local counsel, H Winograd on updates to timing on filing responses to same (.1). JJK BL Research and prepare replies/objections to Dondero, et al. re: bankruptcy court reports. RJF BL Emails regarding reference reports. LSC BL Prepare for and assist at deposition of Peet Burger. IDK BL Review of correspondence to Texas litigation specialists on various questions on motions to withdraw reference and related objections to R&R. JJK BL Research, prepare replies/objections re: bankruptcy court's reports & recommendations. JJK BL Research, review documents, and prepare replies to objections to reports/recommendations and opposition to motion to reconsider. JJK BL Prepare replies to objections to	IDK BL E-mails with J Kim, others on status/issues on the 5 Dondero related motions to withdraw the reference and response status/drafts (.4); E-mails with local counsel, H Winograd on updates to timing on filing responses to same (.1). JJK BL Research and prepare replies/objections to Dondero, et al. re: bankruptcy court reports. RJF BL Emails regarding reference reports. DESC BL Prepare for and assist at deposition of Peet Burger. JJK BL Review of correspondence to Texas litigation specialists on various questions on motions to withdraw reference and related objections to R&R. JJK BL Research, prepare replies/objections re: bankruptcy court's reports & recommendations. JJK BL Research, review documents, and prepare replies to objections to reports/recommendations and opposition to motion to reconsider. JJK BL Prepare replies to objections to 3.60	IDK BL E-mails with J Kim, others on status/issues on the 5 Dondero related motions to withdraw the reference and response status/drafts (.4); E-mails with local counsel, H Winograd on updates to timing on filing responses to same (.1). JJK BL Research and prepare replies/objections to Dondero, et al. re: bankruptcy court reports. RJF BL Emails regarding reference reports. D.20 1395.00 LSC BL Prepare for and assist at deposition of Peet Burger. JJK BL Review of correspondence to Texas litigation specialists on various questions on motions to withdraw reference and related objections to R&R. JJK BL Research, prepare replies/objections re: bankruptcy court's reports & recommendations. JJK BL Research, review documents, and prepare replies to objections to reports/recommendations and opposition to motion to reconsider. JJK BL Prepare replies to objections to 3.60 995.00

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1/2				Hours	<u>Rate</u>	Amount
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08/02/2021	IDK	BL	Review and consider correspondence between H	0.50	1325.00	\$662.50
08/02/2021	IDK	BL	Winograd and local counsel re deadlines to object to pleadings on 5 matters re report and rec to D Court as well as H Winograd of chart on all related actions (.5).	0.30	1323.00	\$662.30
08/02/2021	IDK	BL	E-mails with J Kim re 5 outstanding motions to withdraw reference and objections to report and rec by defendants, and various issues on opponents bias of judge argument (.4); Telephone conference with J Kim re same (.3).	0.70	1325.00	\$927.50
08/02/2021	IDK	BL	E-mails with special Texas litigation counsel on notes litigation and withdrawal of ref and coordination of call re same (.2).	0.20	1325.00	\$265.00
08/02/2021	JJK	BL	Review objections to bankruptcy court reports and prepare additional responses thereto.	1.20	995.00	\$1,194.00
08/02/2021	JJK	BL	Calls Kharasch re: replies to objections to reports/recommendations.	0.10	995.00	\$99.50
08/02/2021	JJK	BL	Call Kharasch on several replies re: withdrawal of reference.	0.20	995.00	\$199.00
08/02/2021	JJK	BL	Revise replies re: objections to withdrawal of reference, etc.	0.20	995.00	\$199.00
08/02/2021	JJK	BL	Prepare replies to objections to Reports, etc.	1.20	995.00	\$1,194.00
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				<u>Hours</u>	Rate	<u>Amount</u>
			, <u> </u>			
08/02/2021	JE	BL	Work on vexatious litigant memo.	6.20	1195.00	\$7,409.00
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08/03/2021	IDK	BL	Review and consider J Kim's draft of response to Dondero objection in District Court to bankruptcy report and recommendation and need for changes (.3); Numerous E-mails with J Kim re need for extensive revisions to same and his responses and new draft re same (.5); E-mail H Winograd re materials to supplement same response (.1).	0.90	1325.00	\$1,192.50
08/03/2021	JJK	BL	Review objections to reports/recommendations and prepare additional replies thereto for filing.	4.80	995.00	\$4,776.00
08/03/2021	JJK	BL	Emails local counsel, Winograd on Debtor replies re: reports and consider issues (0.6); emails Kharasch, Pomerantz on Dondero and HCMFA replies (0.1); prepare replies re: Reports and related research/analysis (2.2).	2.90	995.00	\$2,885.50
08/03/2021	JNP	BL	Conference with John A. Morris and D. Ashby regarding continued investigation.	0.50	1295.00	\$647.50
08/03/2021	JNP	BL	Conference with Farralon, Holland & Knight, John A. Morris and Gregory V. Demo regarding Dondero discovery action.	0.50	1295.00	\$647.50
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Invoice 128474

Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

36027 -00002 August 10, 2021 Amount Hours Rate BL Research and draft response to HCMFA objection to 08/03/2021 HRW 1.50 695.00 \$1,042.50 R&R in notes litigation (1.5) 08/03/2021 HRW 0.60 695.00 BL Review notes litigations deadlines (0.6) \$417.00 08/04/2021 IDK BL 0.60 1325.00 \$795.00 Telephone conferences with J Morris and J Pomerantz re result of hearing today as well as need for his comments to draft response to Dondero objection to Report and Recommendation to District Court (.4); Telephone conference with J Pomerantz re timing on filing given feedback of litigation

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es.				Hours	Rate	Amount
			specialists (.1); Telephone conference with J Morris re timing on his feedback (.1).			
08/04/2021	IDK	BL	E-mails with J Kim and local counsel re status on our response to Dondero objection to R&R (.3); E-mails with J Morris re his revisions to such response, including quick review of same (.2); E-mails with J Kim re same and status on responding to HCMFA objection to R&R and similar changes for same (.2).	0.70	1325.00	\$927.50
08/04/2021	IDK	BL	Numerous E-mails with Gruber, Texas litigation counsel, on their feedback on communications with D Court and timing for responses to Dondero entities objections to R&R (.4).	0.40	1325.00	\$530.00
08/04/2021	JJK	BL	Continue work on replies for filing to objections to reports/recommendations.	4.70	995.00	\$4,676.50
08/04/2021	JJK	BL	Emails Kharasch on Reports replies, related research and review; emails local counsel re: same and certificates of interestedness for various suits.	4.20	995.00	\$4,179.00
08/04/2021	JNP	BL	Conference with Ira D. Kharasch regarding response regarding objections to reports and recommendation on withdrawal motions.	0.10	1295.00	\$129.50
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Invoice 128474

Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

08/05/2021 JJK

BL

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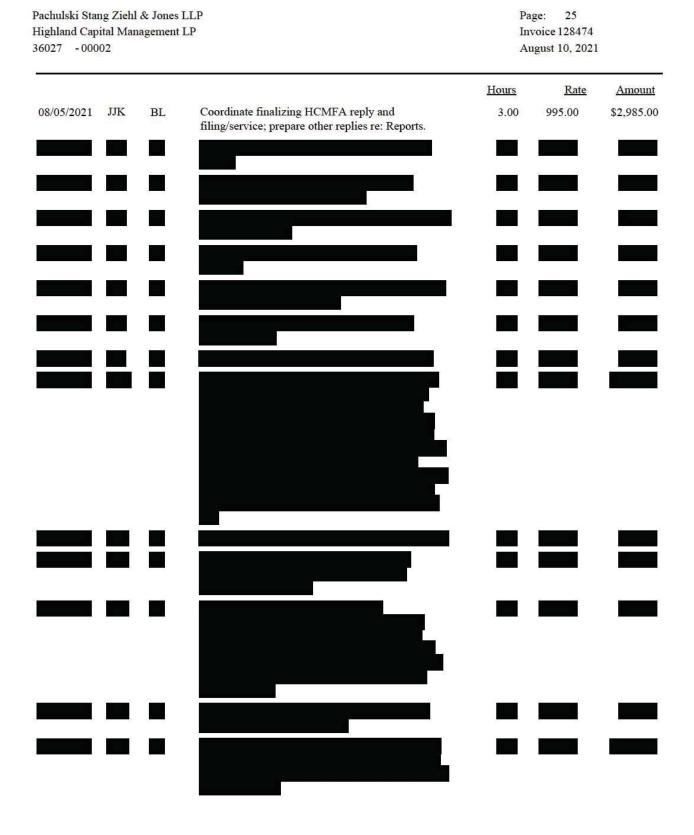
36027 -00002 August 10, 2021 Amount Hours Rate 08/04/2021 JAM BL Review/revise draft response to Dondero objection 1.20 1245.00 \$1,494.00 to Report and Recommendations (1.1); e-mail to I. Kharasch, J. Kim, G. Demo re: revised draft response to Dondero objection to Report and Recommendations (0.1). 08/05/2021 IDK BL E-mail J Kim re his draft response to HCMFA 0.60 1325.00 \$795.00 objection to R&R, including review of same (.3); E-mails with J Morris re same and his changes, along with final response (.3). BL 08/05/2021 JJK Emails Morris on HCMFA reply matters. 0.10 995.00 \$99.50 JJK BL Continue work on replies and filing thereof to \$4,179.00 08/05/2021 4.20 995.00 objections to reports/recommendations.

Emails Morris on HCMFA reply and review

\$99.50

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995.00



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SQ.				<u>Hours</u>	Rate	Amount
F1 20						
08/05/2021	JMF	BL	Review response to opposition to bankruptcy court recommendations to district court.	0.30	1050.00	\$315.00
08/05/2021	JAM	BL	Review/revise objection to HCMFA motion for reconsideration of report and recommendations on notes litigation (0.9); e-mails w/ J. Kim, I. Kharasch re: revisions to objection to HCMFA motion for reconsideration of report and recommendations on notes litigation (0.1).	1.00	1245.00	\$1,245.00
08/05/2021	GVD	BL	Correspondence with working group re status of notes litigation	0.20	950.00	\$190.00
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08/06/2021	IDK	BL	Review of draft response to HCRE objection in D Court to R&R, along with J Kim commentary on same.	0.40	1325.00	\$530.00
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Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP

36027 -00002 August 10, 2021 Hours Rate Amount 08/06/2021 JAM BL Review/revise scheduling stipulation for notes 0.80 1245.00 \$996.00 litigation (0.6); e-mail to H. Winograd re: revised scheduling stipulation (0.1); e-mail to M. Aigen re: revised scheduling stipulation (0.1). 08/06/2021 LSC BL Assist with preparation of discovery requests, 1.40 460.00 \$644.00 including preparation of exhibits.

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×.				Hours	Rate	Amount
08/10/2021	IDK	BL	Review of J Kim's response to motion for reconsideration of R&R by HCRE Partners (.3); E-mails with J Morris re need for his feedback (.1); Review of revised response to HCRE objection (.2); E-mails with J Kim and Local counsel re same (.1).	0.70	1325.00	\$927.50
08/10/2021	IDK	BL	Review of HCMS motion for reconsideration to D Court of R&R of bankruptcy court (.3); E-mails with J Kim re same and need for response to same and issues re same (.2).	0.50	1325.00	\$662.50
08/10/2021	JJK	BL	Emails local counsel on HCM Real Estate reply.	0.10	995.00	\$99.50
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EXHIBIT 179

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd. 13th Floor Los Angeles, CA 90067

Board of Directors Highland Capital Management LP 300 Crescent Court ste. 700 Dallas, TX 75201

RE: Post-Effective Date

September 30, 2021 Invoice 128688 Client 36027 Matter 00003 JNP

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 09/30/2021

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				Hours	Rate	Amount
			_		_	
Notes Lit	igation					
09/01/2021	JMF	NL	Review motion to compel arbitration.	0.40	1050.00	\$420.00
09/01/2021	JAM	NL	Review docket for filings (amended answers, motion to compel arbitration, and motions to dismissed) (0.4).	0.40	1245.00	\$498.00
09/01/2021	GVD	NL	Review motions to dismiss and motions to compel arbitration in notes proceedings	0.30	950.00	\$285.00
09/01/2021	HRW	NL	Review NexPoint amended answer in notes litigation (0.3).	0.30	695.00	\$208.50
09/02/2021	JNP	NL	Conference with John A. Morris regarding arbitration motion, motion to stay and strategy.	0.20	1295.00	\$259.00
09/02/2021	JMF	NL	Review motions to dismiss and compel arbitration.	0.50	1050.00	\$525.00
09/02/2021	GVD	NL	Conference with J. Morris re notes litigation and next steps	0.50	950.00	\$475.00
09/02/2021	HRW	NL	Communicate with local counsel re: stipulations in notes litigations (0.1).	0.10	695.00	\$69.50
09/04/2021	GVD	NL	Review limited partnership provisions re motions to dismiss	1.60	950.00	\$1,520.00
09/05/2021	GVD	NL	Review correspondence from J. Morris re notes litigation	0.20	950.00	\$190.00
09/05/2021	HRW	NL	Draft discovery requests for consolidated notes	3.50	695.00	\$2,432.50

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			1:4:4: (2.5)	<u>Hours</u>	Rate	Amount
			litigations (3.5).			
09/05/2021	HRW	NL	Review motions for stay and arbitration in notes litigations (1.5).	1.50	695.00	\$1,042.50
09/06/2021	GVD	NL	Conference with J. Morris re notes litigation	0.20	950.00	\$190.00
09/06/2021	HRW	NL	Draft discovery requests for consolidated notes litigations (9.5).	9.50	695.00	\$6,602.50
09/07/2021	JMF	NL	Review scheduling orders re notes litigation adversaries.	0.30	1050.00	\$315.00
09/07/2021	JAM	NL	Review draft discovery demands for notes litigation (0.6); tel c. w/ H. Winograd re: discovery issues (0.3); communications w/ D. Klos, J. Seery re: cost/value of MGM, RCP, Trussway (0.2); draft discovery requests for NexPoint (0.5); tel c. w/ H. Winograd re: discovery demands (0.1); review revised discovery demands (0.5); e-mails w/ H. Winograd re: final versions of discovery demands (0.1).	2.30	1245.00	\$2,863.50
09/07/2021	HRW	NL	Call with J. Morris re: notes litigation discovery (0.3).	0.30	695.00	\$208.50
09/07/2021	HRW	NL	Call with J. Morris re: notes litigation arbitration motions (0.4).	0.40	695.00	\$278.00
09/07/2021	HRW	NL	Draft discovery requests for consolidated notes litigations.	6.80	695.00	\$4,726.00
09/07/2021	HRW	NL	Serve discovery requests on opposing counsel for consolidated notes litigations.	0.20	695.00	\$139.00
09/08/2021	JJK	NL	Emails Kharasch on reference matters and consider/research same.	1.30	995.00	\$1,293.50
09/08/2021	GVD	NL	Correspondence re email discovery issues	0.20	950.00	\$190.00
09/08/2021	GVD	NL	Conference with J. Morris re additional notes litigation	0.20	950.00	\$190.00
09/09/2021	JNP	NL	Conference with John A. Morris regarding response to arbitration and motion to dismiss motion.	0.10	1295.00	\$129.50
09/09/2021	JAM	NL	Meet with G. Demo, H. Winograd re: motions for arbitration and to dismiss (0.5); tel c. w/ J. Seery, D. Klos re: Dondero compensation (0.5).	1.00	1245.00	\$1,245.00
09/09/2021	GVD	NL	Conference with J. Morris and H. Winograd re response to notes litigation actions	1.00	950.00	\$950.00
09/09/2021	HRW	NL	Review deadlines re: consolidated notes litigations motions to dismiss and motion for stay (0.2).	0.20	695.00	\$139.00
09/13/2021	JNP	NL	Conference with John A. Morris regarding motion to dismiss and motion to compel arbitration.	0.20	1295.00	\$259.00

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				<u>Hours</u>	Rate	<u>Amount</u>
09/13/2021	JNP	NL	Conference with Jordan A. Kroop regarding motion to dismiss and motion to compel arbitration.	0.20	1295.00	\$259.00
09/13/2021	JNP	NL	Review motion to compel arbitration.	0.20	1295.00	\$259.00
09/13/2021	JNP	NL	Conference with Hayley R. Winograd, John A. Morris and Jordan A. Kroop regarding motion to compel arbitration.	0.80	1295.00	\$1,036.00
09/13/2021	JAM	NL	Tel c. w/ J. Pomerantz, J. Kroop, H. Winograd re: defendants' arbitration motion (0.8); e-mail to J. Seery re: motions to dismiss and to arbitrate (0.2); e-mail to J. Pomerantz, J. Kroop re: motions to dismiss and arbitrate (0.1).	1.10	1245.00	\$1,369.50
09/13/2021	HRW	NL	Call with J. Morris, J. Pomerantz, and J. Kroop (0.8).	0.80	695.00	\$556.00
09/13/2021	HRW	NL	Review motion to dismiss in notes litigations (2.0).	2.00	695.00	\$1,390.00
09/13/2021	JAK	NL	Begin review of motion to compel arbitration (0.8); strategy and planning discussion with John Morris, Jeff Pomerantz, and Hayley Winograd (0.8); follow-up discussion with Jeff Pomerantz regarding arbitration motion (0.2); additional review and analysis of arbitration motion (1.1);	2.90	1100.00	\$3,190.00
09/14/2021	IDK	NL	E-mails with attorneys re D Court upholding report and recommendation re HCMFA proceeding, including review of same	0.30	1325.00	\$397.50
09/14/2021	HRW	NL	Review motion to dismiss complaint in notes litigation (2.0).	2.00	695.00	\$1,390.00
09/15/2021	HRW	NL	Research re: motion to dismiss complaint in notes litigation (3.5).	3.50	695.00	\$2,432.50
09/15/2021	HRW	NL	Send opposing counsel supplemental productions in notes litigation (0.2).	0.20	695.00	\$139.00
09/17/2021	GVD	NL	Conference with J. Morris re status of notes litigation	0.10	950.00	\$95.00
09/17/2021	GVD	NL	Conference with H. Winograd re response to motions to dismiss and next steps	0.60	950.00	\$570.00
09/17/2021	HRW	NL	Call with G. Demo re: motion to dismiss in notes litigations (0.6).	0.60	695.00	\$417.00
09/17/2021	HRW	NL	Call with J. Morris re: litigation deadlines (0.1).	0.10	695.00	\$69.50
09/17/2021	HRW	NL	Review and research re: motion to dismiss in notes litigations (3.5).	3.50	695.00	\$2,432.50
09/17/2021	JAK	NL	Review previous pleadings and begin outlining opposition to demand for arbitration;	1.40	1100.00	\$1,540.00

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				Hours	Rate	Amount
09/18/2021	HRW	NL	Draft and research re: motion to dismiss in notes litigations (5.5).	5.50	695.00	\$3,822.50
09/19/2021	JAM	NL	Review of documents and docket and e-mails to J. Kropp, J. Pomerantz, G. Demo, H. Winograd re: facts and arguments concerning opposition to motion to compel arbitration (3.0); further communications w/ J. Kroop re: arbitration motion (0.1).	3.10	1245.00	\$3,859.50
09/19/2021	HRW	NL	Draft and research re: motion to dismiss in notes litigations (8.5).	8.50	695.00	\$5,907.50
09/19/2021	JAK	NL	Email correspondence with John Morris regarding various arguments pertaining to waiver and estoppel for arbitration motion objection; review and analyze transcripts from previous hearing; begin research regarding various arguments for arbitration objection;	3.30	1100.00	\$3,630.00
09/20/2021	IDK	NL	Review of order from District Court on order of reference re DAF action, including E-mail from J Morris re same.	0.20	1325.00	\$265.00
09/20/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (13.0).	13.00	695.00	\$9,035.00
09/20/2021	JAK	NL	Drafting of portions of objection to arbitration motion; research legal issues for use in same; emails with John Morris regarding additional arguments and support for same; review and analyze provisions of limited partnership agreement for use in arguments in opposition of arbitration agreement; memo outlining legal issues to be researched and supporting direction;	4.40	1100.00	\$4,840.00
09/21/2021	GVD	NL	Correspondence with team re ability to enforce arbitration in rejected agreement	0.50	950.00	\$475.00
09/21/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (9.0).	9.00	695.00	\$6,255.00
09/21/2021	HRW	NL	Review prior discovery R&OS sent to all parties in notes litigations (1.0).	1.00	695.00	\$695.00
09/21/2021	HRW	NL	Draft R&Os for discovery requests in consolidated notes litigation (1.5).	1.50	695.00	\$1,042.50
09/22/2021	JJK	NL	Emails Kroop, Keane on research for opp. to Dondero motion re arbitration; research for inserts.	3.60	995.00	\$3,582.00
09/22/2021	JJK	NL	Research for opp. to motion re: arbitration.	4.80	995.00	\$4,776.00
09/22/2021	JJK	NL	Research for opp. to arbitration motion and emails Kroop on same.	1.40	995.00	\$1,393.00

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				<u>Hours</u>	Rate	<u>Amount</u>
09/22/2021	JAM	NL	Review defendants' discovery demands (0.4); tel c. w. G. Demo re: responses to RFAs (corporate issues) (0.3); tel c. w/ H. Winograd re: document requests and responses (0.7); tel c. w/ G. Demo re: responses to discovery (0.2); e-mails w/ T. Surgent, D. Klos, G. Demo, H. Winograd re: e-mail searches for Nancy Dondero (0.3).	1.90	1245.00	\$2,365.50
09/22/2021	GVD	NL	Conference with J. Morris re discovery issues	0.30	950.00	\$285.00
09/22/2021	GVD	NL	Conference with H. Winograd re response to motion to dismiss	0.20	950.00	\$190.00
09/22/2021	GVD	NL	Draft responses to discovery questions and correspondence with J. Morris re same	0.70	950.00	\$665.00
09/22/2021	GVD	NL	Conference with J. Morris re notes litigation status	0.20	950.00	\$190.00
09/22/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (11.0).	11.00	695.00	\$7,645.00
09/22/2021	HRW	NL	Draft R&Os for discovery requests in consolidated notes litigation (2.0).	2.00	695.00	\$1,390.00
09/22/2021	HRW	NL	Call with J. Morris re: discovery requests in consolidated notes litigation (0.7).	0.70	695.00	\$486.50
09/22/2021	JAK	NL	Extensive drafting of opposition to arbitration motion; legal research regarding issues and arguments for same; emails with internal research group regarding issues for researching and related matters;	6.90	1100.00	\$7,590.00
09/23/2021	JJK	NL	Research for opp. to arbitration motion; conf. call Kroop and Keane on same (0.6).	5.80	995.00	\$5,771.00
09/23/2021	JJK	NL	Research for opp. to arbitration motion.	3.10	995.00	\$3,084.50
09/23/2021	JNP	NL	Review of emails from N. Dondero; Conference with John A. Morris regarding same.	0.30	1295.00	\$388.50
09/23/2021	JAM	NL	Tel c. w/ L. Canty re: document review (0.1); tel c. w/ J. Seery re: strategy for responding to motions (0.2); tel c. w/ J. Pomerantz re: strategy for responding to motions (0.1); review documents (3.1).	3.50	1245.00	\$4,357.50
09/23/2021	LSC	NL	Begin preparation of document productions.	2.60	460.00	\$1,196.00
09/23/2021	GVD	NL	Correspondence re research items re arbitration demand	0.10	950.00	\$95.00
09/23/2021	GVD	NL	Conference with J. Morris re notes discovery	0.10	950.00	\$95.00
09/23/2021	GVD	NL	Conference with J. Morris re status of notes litigation and next steps	0.20	950.00	\$190.00

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				<u>Hours</u>	Rate	Amount
09/23/2021	HRW	NL	Gather documents for discovery requests in consolidated notes litigation (1.0).	1.00	695.00	\$695.00
09/23/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (12.0).	12.00	695.00	\$8,340.00
09/23/2021	JAK	NL	Review and analyze initial research results on issues pertaining to arbitration opposition from Jonathan Kim and Peter Keane; extensive drafting of arbitration opposition; additional case research and analysis regarding arguments for same; confer with Jonathan Kim and Peter Keane regarding same;	4.90	1100.00	\$5,390.00
09/24/2021	JNP	NL	Conference with Jordan A. Kroop regarding opposition to motion to compel arbitration.	0.30	1295.00	\$388.50
09/24/2021	JAM	NL	Tel c. w/ J. Seery re: opposition to motions (0.3); review documents and begin preparing for depositions (4.1).	4.40	1245.00	\$5,478.00
09/24/2021	GVD	NL	Review discovery responses to notes litigation	0.30	950.00	\$285.00
09/24/2021	HRW	NL	Call with J. Morris and DSI re: discovery requests in consolidated notes litigation (1.0).	1.00	695.00	\$695.00
09/24/2021	HRW	NL	Draft R&Os for discovery requests in consolidated notes litigation (1.5).	1.50	695.00	\$1,042.50
09/24/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (9.0).	9.00	695.00	\$6,255.00
09/24/2021	JAK	NL	Continued research and analysis of cases in connection with arbitration opposition; strategy discussion with Jeff Pomerantz regarding same; extensive additional drafting and revision of arbitration opposition;	5.70	1100.00	\$6,270.00
09/25/2021	JAM	NL	Review/revise opposition to motion to dismiss (2.7); tel c. w/ J. Seery re: status and strategy for notes litigation (0.3).	3.00	1245.00	\$3,735.00
09/26/2021	JAM	NL	Communications w/ J. Seery, D. Klos, D. Newman re: responses to discovery (0.2).	0.20	1245.00	\$249.00
09/26/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (7.0).	7.00	695.00	\$4,865.00
09/26/2021	JAK	NL	Additional research on issues pertaining to 2.30 1100.00 arbitration opposition; additional drafting of opposition; email to Jeff Pomerantz and John Morris regarding same with explanation of approach and related suggestions;		1100.00	\$2,530.00
09/27/2021	JNP	NL	Review opposition to motion to arbitrate.	0.30	1295.00	\$388.50
09/27/2021	JNP	NL	Conference with John A. Morris regarding opposition to motion to arbitrate.	0.20	1295.00	\$259.00

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				<u>Hours</u>	Rate	<u>Amount</u>
09/27/2021	JNP	NL	Conference with John A. Morris and Jordan A. Kroop regarding response to motion to arbitrate.	0.40	1295.00	\$518.00
09/27/2021	JAM	NL	Review/revise opposition to motion to dismiss (2.5); review/revise written responses to discovery (2.4); e-mails w/ J. Seery, J. Pomerantz, G. Demo, H. Winograd re: written responses to discovery (0.2); tel c. w. J. Seery re: written responses to discovery (0.2); tel c. w/ J. Pomerantz re: oppositions to MTD and arbitration (0.2); tel c. w/ J. Pomerantz, J. Koop re: opposition to motion to compel arbitration (0.4); further revisions to written responses to discovery (0.2); communications w/ J. Seery re: responses to written discovery (0.1).	6.20	1245.00	\$7,719.00
09/27/2021	LSC	NL	Continued preparation of document productions.	9.10	460.00	\$4,186.00
09/27/2021	GVD	NL	Review response to motion to dismiss litigation	0.60	950.00	\$570.00
09/27/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (7.5).	7.50	695.00	\$5,212.50
09/27/2021	HRW	NL	Gather production for consolidated notes discovery (1.8).	1.80	695.00	\$1,251.00
09/27/2021	HRW	NL	Draft and review R&Os for discovery requests in consolidated notes litigation (1.5).	1.50	695.00	\$1,042.50
09/27/2021	HRW	NL	Send opposing counsel R&Os in consolidated notes litigation (0.2).	0.20	695.00	\$139.00
09/27/2021	HRW	NL	Send opposing counsel production in consolidated notes litigation (0.1).	0.10	695.00	\$69.50
09/27/2021	JAK	NL	Strategy discussion with John Morris and Jeff Pomerantz regarding opposition to arbitration motion and related matters; extensive additional drafting, research, and review of issues and portions of arbitration motion opposition; work with Greg Demo regarding confirmation-related citations and background for use in opposition; additional drafting and revisions to arbitration opposition;	3.10	1100.00	\$3,410.00
09/28/2021	JNP	NL	Review latest version of opposition to motion to arbitrate and emails regarding same.	0.20	1295.00	\$259.00
09/28/2021	JNP	NL	Review opposition to motion to dismiss.	0.30	1295.00	\$388.50
09/28/2021	JMF	NL	Review responses to motion to dismiss and arbitration.	0.50	1050.00	\$525.00
09/28/2021	JAM	NL	Review/revise draft opposition to motion to compel arbitration (4.8); e-mails w/ J. Seery, J. Pomerantz, J. Koop, G. Demo, H. Winograd re: opposition to motion to compel arbitration (0.4); tel c. w/ J. Seery re: opposition to motion to compel arbitration (0.1);	9.10	1245.00	\$11,329.50

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				<u>Hours</u>	Rate	Amount
			tel c. w/ J. Koop re: motion to compel arbitration (0.1); further review and revisions to opposition to motions to dismiss and to compel arbitration (3.2); communications w/ H. Winograd, J. Koop re: oppositions to motion to dismiss and to compel arbitration (0.5).			
09/28/2021	LSC	NL	Prepare draft declaration in support of opposition to Motion to compel Arbitration and Stay Litigation, revise same, and prepare exhibits to same.	0.70	460.00	\$322.00
09/28/2021	GVD	NL	Review motion to dismiss response	1.00	950.00	\$950.00
09/28/2021	HRW	NL	Draft and file opposition to motion to dismiss in notes litigations (8.0).	8.00	695.00	\$5,560.00
09/28/2021	JAK	NL	Extensive revisions, review, and editing of opposition to arbitration motion; edits and review of declaration in support of same; confer over telephone and emails with John Morris and Jeff Pomerantz regarding same; final edits and preparation of opposition for filing and service; supervise filing and service of same, with drafting of cover response per local rules;	6.80	1100.00	\$7,480.00
09/29/2021	JAM	NL	Review documents and written responses to discovery served by all defendants (2.0); e-mail to defense counsel re: deficiencies in written responses to discovery (0.4); e-mail to J. Seery, T. Surgent, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: defendants' deficiencies in discovery (0.4); tel c. J. Seery re: discovery in the notes litigation (0.3).	3.10	1245.00	\$3,859.50
09/29/2021	GVD	NL	Conference with J. Morris re notes litigation discovery	0.20	950.00	\$190.00
09/30/2021	JAM	NL	Tel c. w/ G. Demo, Wilmer re: Waterhouse as a witness and regulatory issues (0.8); e-mail to defense counsel re: discovery issues and depositions (0.6); e-mail to D. Dandeneau, J. Pomerantz, G. Demo re: Waterhouse deposition (0.1)	1.50	1245.00	\$1,867.50
09/30/2021	GVD	NL	Conference with WilmerHale and J. Morris re discovery issues in notes litigation	0.80	950.00	\$760.00
09/30/2021	HRW	NL	Communicate with Robert Half for production re: consolidated notes production (0.2).	0.20	695.00	\$139.00
			-	269.40		\$235,361.50

EXHIBIT 180

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd. 13th Floor Los Angeles, CA 90067

Board of Directors Highland Capital Management LP 300 Crescent Court ste. 700 Dallas, TX 75201

RE: Post-Effective Date

November 05, 2021 Invoice 128811 Client 36027 Matter 00003 JNP

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 11/05/2021

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Pachulski Stang Ziehl & Jones LLP

Highland Capital Management LP Prebill#287690 36027 -00003 November 05, 2021 Hours Rate Amount **Notes Litigation** 09/15/2021 NL 2.00 2.00 750.00 1,500.00 CHM Bill 09/15/2021 CHM NL 2.00 750.00 Review results of privilege review and check \$1,500.00 documents marked for production or withholding. Run production of NexPoint results and email J. Morris and H. Winograd re same. CHM 09/15/2021 NL 0.10 0.10 750.00 75.00 Bill 09/15/2021 CHM NL Review email from H. Winograd and reply. 0.10 750.00 \$75.00 CHM 09/23/2021 NL 0.10 0.10 750.00 75.00 Bill 09/23/2021 CHM NL 0.10 750.00 \$75.00 Review email from H. Winograd and reply. NL 2.30 CHM 09/30/2021 2.30 750.00 1,725.00

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Bill						<u>Hours</u>	Rate	Amount
09/30/2021	СНМ	NL	Review documents consolidated notes Winograd re same	litigation search r		2.30	750.00	\$1,725.00
JAM Bill	10/01/202	21	NL	3.10	3.10	1,245.00		3,859.50
10/01/2021	JAM	NL	Review discovery prepare Rule 30(b) HCMS, and Nexpo Seery, T. Surgent, H. Winograd re: do	0(6) deposition not oint (2.8); commun D. Klos, J. Pomer	tices for HCRE, nications w/ J. antz, G. Demo,	3.10	1245.00	\$3,859.50
HRW Bill	10/01/202	21	NL	0.50	0.50	695.00		347.50
10/01/2021	HRW	NL	Communicate with consolidated notes		production re:	0.50	695.00	\$347.50
HRW Bill	10/01/202	21	NL	0.50	0.50	695.00		347.50
10/01/2021	HRW	NL	Oversee and review notes production (e: consolidated	0.50	695.00	\$347.50
JAM Bill	10/02/202	21	NL	2.60	2.60	1,245.00		3,237.00
10/02/2021	JAM	NL	Tel c. w/ G. Demo deposition notices Waterhouse, Duga w/ J. Pomerantz, C Annable re: deposi	for J. Dondero, N boy, and HCMFA J. Demo, H. Wino	Dondero, F. (2.1); e-mails grad, Z.	2.60	1245.00	\$3,237.00
GVD Bill	10/02/202	21	NL	0.40	0.40	950.00		380.00
10/02/2021	GVD	NL	Conference with J. discovery issues	Morris about note	es litigation	0.40	950.00	\$380.00
GVD Bill	10/02/202	21	NL	0.50	0.50	950.00		475.00
10/02/2021	GVD	NL	Review deposition	notices		0.50	950.00	\$475.00
JAM Bill	10/03/202	21	NL	3.90	3.90	1,245.00		4,855.50
10/03/2021	JAM	NL	Prepare deposition	notices for HCRE	E, HCMS,	3.90	1245.00	\$4,855.50

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			NexPoint and subpo deposition notices for (3.6); e-mails w/ J. S. Pomerantz, G. Dem	or F. Waterhous Seery, T. Surger o, H. Winograd	ne and HCMFA nt, D. Klos, J. re: deposition	<u>Hours</u>	Rate	Amount
			notices (0.2); tel c. v deposition notices (Demo re:			
GVD Bill	10/03/202	21	NL	0.30	0.30	950.00		285.00
10/03/2021	GVD	NL	Review discovery resame	equests and corr	espondence re	0.30	950.00	\$285.00
HRW Bill	10/03/202	21	NL	1.00	1.00	695.00		695.00
10/03/2021	HRW	NL	Review and edit deplitigation (1.0).	position notices	for notes	1.00	695.00	\$695.00
JAM Bill	10/04/202	21	NL	1.80	1.80	1,245.00		2,241.00
10/04/2021	JAM	NL	Review/revise/finali subpoenas, and notic defense counsel, J. I Winograd, Z. Annal subpoenas, notices ((0.3); e-mail to Z. A H. Winograd re: ser and subpoenas (0.1) discovery (0.3).	ces of subpoena Pomerantz, G. E ble re: depositio of subpoena and nnable, J. Pome vice of the depo	s (1.1); e-mail to Demo, H. n notices, related matters erantz, G. Demo, osition notices	1.80	1245.00	\$2,241.00
HRW Bill	10/04/202	21	NL	0.50	0.50	695.00		347.50
10/04/2021	HRW	NL	Review production (0.5).	re: consolidated	notes production	0.50	695.00	\$347.50
HRW Bill	10/04/202	21	NL	0.20	0.20	695.00		139.00
10/04/2021	HRW	NL	Communicate with I Employee Claims (C		production for	0.20	695.00	\$139.00
JAM Bill	10/05/202	21	NL	1.70	1.70	1,245.00		2,116.50
10/05/2021	JAM	NL	Tel c. w/ H. Winogr (0.5); tel c. w/ D. Ru w/ J. Seery re: disco Rukavina, D. Deitsc	ukavina re: discovery, status (0.5	overy (0.3); tel c. 5); e-mails w/ D.	1.70	1245.00	\$2,116.50

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			depositions (0.4).			<u>Hours</u>	Rate	Amount
GVD Bill	10/05/202	1	NL	0.30	0.30	950.00		285.00
10/05/2021	GVD	NL	Correspondence with	Quinn re note	s litigation	0.30	950.00	\$285.00
HRW Bill	10/05/202	1	NL	0.50	0.50	695.00		347.50
10/05/2021	HRW	NL	Call with J. Morris re litigation (0.5).	: discovery iss	sues in notes	0.50	695.00	\$347.50
HRW Bill	10/05/202	1	NL	0.30	0.30	695.00		208.50
10/05/2021	HRW	NL	Review discovery issu	ues in notes lit	eigation (0.3).	0.30	695.00	\$208.50
JAM Bill	10/06/202	1	NL	1.60	1.60	1,245.00		1,992.00
10/06/2021	JAM	NL	E-mail to D. Deitz-Pe (0.3); e-mail to D. Da deposition (0.1); e-mail to various discovery in	andeneau re: Wail to M. Aiger defense coun	Vaterhouse n re: discovery	1.60	1245.00	\$1,992.00
LSC Bill	10/06/202	1	NL	2.10	2.10	460.00		966.00
10/06/2021	LSC	NL	Research, correspond	ence, and revi	ew of discovery.	2.10	460.00	\$966.00
GVD Bill	10/06/202	1	NL	0.20	0.20	950.00		190.00
10/06/2021	GVD	NL	Correspondence with notes	litigation trust	tee re outstanding	0.20	950.00	\$190.00
HRW Bill	10/06/202	.1	NL	0.80	0.80	695.00		556.00
10/06/2021	HRW	NL	Review responses and requests in notes litig		e: discovery	0.80	695.00	\$556.00
HRW Bill	10/06/202	1	NL	0.50	0.50	695.00		347.50
10/06/2021	HRW	NL	Respond to J. Morris notes litigation (0.5).	email re: disco	overy issues in	0.50	695.00	\$347.50
HRW	10/06/202	1	NL	0.20	0.20	695.00		139.00

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Bill						Hours	Rate	Amount
BIII								
10/06/2021	HRW	NL	Review emails rega and scheduling (0.2		leposition issues	0.20	695.00	\$139.00
HRW Bill	10/06/202	21	NL	0.10	0.10	695.00		69.50
10/06/2021	HRW	NL	Send opposing couproduction (0.1).	nsel supplement	al notes litigation	0.10	695.00	\$69.50
HRW Bill	10/06/202	21	NL	0.80	0.80	695.00		556.00
10/06/2021	HRW	NL	Prepare supplement (0.8).	tal production fo	or notes litigation	0.80	695.00	\$556.00
JAM Bill	10/07/202	21	NL	0.40	0.40	1,245.00		498.00
10/07/2021	JAM	NL	Review/revise e-madiscovery (0.4).	ail to defense con	unsel re:	0.40	1245.00	\$498.00
LSC Bill	10/07/202	21	NL	2.30	2.30	460.00		1,058.00
10/07/2021	LSC	NL	Research, correspon	ndence, and revi	ew of discovery.	2.30	460.00	\$1,058.00
GVD Bill	10/07/202	21	NL	0.20	0.20	950.00		190.00
10/07/2021	GVD	NL	Correspondence wi	th Quinn re note	es collection	0.20	950.00	\$190.00
HRW Bill	10/07/202	21	NL	0.10	0.10	695.00		69.50
10/07/2021	HRW	NL	Email J. Morris re: litigation (0.1).	discovery issues	s in notes	0.10	695.00	\$69.50
HRW Bill	10/07/202	21	NL	0.10	0.10	695.00		69.50
10/07/2021	HRW	NL	Email DSI re: re: d (0.1).	iscovery issues i	n notes litigation	0.10	695.00	\$69.50
JAM Bill	10/08/202	21	NL	2.70	2.70	1,245.00		3,361.50
10/08/2021	JAM	NL	Analyze NexPoint' and e-mail to J. See			2.70	1245.00	\$3,361.50

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HRW 10/08/2021 HRW NL Review DSI email and production re: Dondero 0.30 695.00 \$208.50							<u>Hours</u>	Rate	Amount
Bill		Seery, T. Surgent, D. Rukavina, H. Winograd re: objections to NexPoint's Rule 30(b)(6) deposition notice (0.4); revise deposition notices for J. Dondero, HCRE, HCMS, and NexPoint (0.2); e-mails w/ Z. Annable, H. Winograd re: revised deposition notices for J. Dondero, HCRE, HCMS, and NexPoint (0.1); e-mails w/ D. Klos, T. Surgent, H. Winograd re: documents and information concerning J. Dondero compensation, loan history (0.4); review defendants' document production (0.2).							
HRW 10/08/2021 NL 0.30 0.30 695.00 208.50		10/08/202	21	NL	0.10	0.10	695.00		69.50
Bill 10/08/2021 HRW NL Review DSI email and production re: Dondero 0.30 695.00 \$208.50 Compensation (0.3).	10/08/2021	HRW	NL		es for consolic	dated notes	0.10	695.00	\$69.50
Compensation (0.3).		10/08/202	21	NL	0.30	0.30	695.00		208.50
Bill	10/08/2021	HRW	NL		l production re	e: Dondero	0.30	695.00	\$208.50
NL 5.90 5.90 1,245.00 7,345.50		10/08/202	21	NL	0.20	0.20	695.00		139.00
Bill 10/09/2021 JAM NL E-mails to TSG re: depositions (0.3); e-mail to H. 5.90 1245.00 \$7,345.50 Winograd re: additional document production (0.1); e-mails w/ D. Klos, T. Surgent, H, Winograd re: Dondero loans and payment history (0.2); e-mails w/ J. Seery, D, Klos re: cost/value of portfolio companies (0.1); begin Nancy Dondero deposition outline (2.3); tel c. w/ J. Seery re: notes litigation (0.2); review documents/transcripts (2.7). JAM 10/10/2021 NL 2.10 2.10 1,245.00 2,614.50 Bill 10/10/2021 JAM NL Analyze Rule 30(b)(6) Notice of Dondero, HCRE and HCMS and prepare draft objections (1.8); tel c. w/ J. Seery re: litigation matters (0.3).	10/08/2021	HRW	NL		m defendants	in consolidated	0.20	695.00	\$139.00
Winograd re: additional document production (0.1); e-mails w/ D. Klos, T. Surgent, H, Winograd re: Dondero loans and payment history (0.2); e-mails w/ J. Seery, D, Klos re: cost/value of portfolio companies (0.1); begin Nancy Dondero deposition outline (2.3); tel c. w/ J. Seery re: notes litigation (0.2); review documents/transcripts (2.7). JAM 10/10/2021 NL 2.10 2.10 1,245.00 2,614.50 Bill 10/10/2021 JAM NL Analyze Rule 30(b)(6) Notice of Dondero, HCRE 2.10 1245.00 \$2,614.50 and HCMS and prepare draft objections (1.8); tel c. w/ J. Seery re: litigation matters (0.3).		10/09/202	21	NL	5.90	5.90	1,245.00		7,345.50
Bill 10/10/2021 JAM NL Analyze Rule 30(b)(6) Notice of Dondero, HCRE 2.10 1245.00 \$2,614.50 and HCMS and prepare draft objections (1.8); tel c. w/ J. Seery re: litigation matters (0.3).	10/09/2021	JAM	NL	Winograd re: addition e-mails w/ D. Klos, T. Dondero loans and par J. Seery, D, Klos re: companies (0.1); begin outline (2.3); tel c. w/	al document p Surgent, H, W yment history ost/value of pon n Nancy Dond J. Seery re: no	roduction (0.1); Vinograd re: (0.2); e-mails w/ ortfolio ero deposition ites litigation		1245.00	\$7,345.50
and HCMS and prepare draft objections (1.8); tel c. w/ J. Seery re: litigation matters (0.3).		10/10/202	21	NL	2.10	2.10	1,245.00		2,614.50
JAM 10/11/2021 NL 0.40 0.40 1,245.00 498.00	10/10/2021	JAM	NL	and HCMS and prepar	re draft objecti	ons (1.8); tel c.	2.10	1245.00	\$2,614.50
	JAM	10/11/202	21	NL	0.40	0.40	1,245.00		498.00

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						<u>Hours</u>	Rate	Amount
Bill								
10/11/2021	JAM	NL	E-mails w/ D. Rukavi depositions (0.2); e-m re: Waterhouse roles (L. Canty re: supplement (0.1).	ails w/ D. Klo (0.1); e-mails v	s, T. Conouyer w/ H. Winograd,	0.40	1245.00	\$498.00
LSC Bill	10/11/202	:1	NL	0.50	0.50	460.00		230.00
10/11/2021	LSC	NL	Retrieve and review I production.	Oondero's supp	lemental	0.50	460.00	\$230.00
HRW Bill	10/11/202	.1	NL	0.10	0.10	695.00		69.50
10/11/2021	HRW	NL	Review email from coin consolidated notes			0.10	695.00	\$69.50
HRW Bill	10/11/202	.1	NL	0.50	0.50	695.00		347.50
10/11/2021	HRW	NL	Review supplemental notes litigation (0.5).	production in	consolidated	0.50	695.00	\$347.50
JAM Bill	10/12/202	:1	NL	4.60	4.60	1,245.00		5,727.00
10/12/2021	JAM	NL	E-mails w/ defense co e-mails w/ D. Klos, L supplemental docume depositions (3.4); e-m depositions (0.2); tel obligors' payments or	Canty, H. Wint production ails w/ defense. w/ J. Seery,	nograd re: (0.5); prepare for e counsel re:	4.60	1245.00	\$5,727.00
LSC Bill	10/12/202	:1	NL	4.20	4.20	460.00		1,932.00
10/12/2021	LSC	NL	Preparation of suppler including redactions to regarding the same.			4.20	460.00	\$1,932.00
LSC Bill	10/12/202	1	NL	0.50	0.50	460.00		230.00
10/12/2021	LSC	NL	Coordinate and assist of documents with res Morris.			0.50	460.00	\$230.00
HRW	10/12/202	:1	NL	1.80	1.80	695.00		1,251.00

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						<u>Hours</u>	Rate	Amount
Bill								
10/12/2021	HRW	NL	Review supplemen notes litigation (1.8		r consolidated	1.80	695.00	\$1,251.00
HRW Bill	10/12/202	21	NL	0.20	0.20	695.00		139.00
10/12/2021	HRW	NL	Send counsel suppl consolidated notes		ion for	0.20	695.00	\$139.00
HRW Bill	10/12/202	21	NL	0.50	0.50	695.00		347.50
10/12/2021	HRW	NL	Call with DSI re: b demonstrative char Cornerstone valuat litigation (0.5).	t showing Trussy	vay, MGM,	0.50	695.00	\$347.50
HRW Bill	10/12/202	21	NL	0.20	0.20	695.00		139.00
10/12/2021	HRW	NL	Email J. Morris, G. re: backup docume showing Trussway, in consolidated not	ntation for demo MGM, Cornerst	nstrative chart one valuations	0.20	695.00	\$139.00
HRW Bill	10/12/202	21	NL	0.20	0.20	695.00		139.00
10/12/2021	HRW	NL	Email J. Morris re: consolidated notes		oductions for	0.20	695.00	\$139.00
JAM Bill	10/13/202	21	NL	6.80	6.80	1,245.00		8,466.00
10/13/2021	JAM	NL	Prepare for meeting depositions, includ NexPoint (1.2); e-r Klos re: deposition Seery, D. Klos, T. re: preparation for defense counsel re: depositions (3.6).	ing analysis of is nails to J. Seery, preparation (0.3 Surgent, G. Dem depositions (1.5)	sues concerning T. Surgent, D.); tel c. w/ J. o, H, Winograd ; letters to	6.80	1245.00	\$8,466.00
GVD Bill	10/13/202	21	NL	1.60	1.60	950.00		1,520.00
10/13/2021	GVD	NL	Conference with J. preparation for dep		nd PSZJ re	1.60	950.00	\$1,520.00

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					<u>Hours</u>	Rate	Amount
GVD Bill	10/13/2021	NL	0.30	0.30	950.00		285.00
10/13/2021	GVD NI	Conference with J. litigation and next		of notes	0.30	950.00	\$285.00
GVD Bill	10/13/2021	NL	0.10	0.10	950.00		95.00
10/13/2021	GVD NI	Review transcripts	re notes litigatio	n issues	0.10	950.00	\$95.00
HRW Bill	10/13/2021	NL	1.50	1.50	695.00		1,042.50
10/13/2021	HRW NI	Review defendants requests in notes li		land's discovery	1.50	695.00	\$1,042.50
HRW Bill	10/13/2021	NL	0.20	0.20	695.00		139.00
10/13/2021	HRW NI	Email J. Morris re discovery requests			0.20	695.00	\$139.00
HRW Bill	10/13/2021	NL	1.20	1.20	695.00		834.00
10/13/2021	HRW NI	Call with J. Seery for notes litigation		leposition prep	1.20	695.00	\$834.00
HRW Bill	10/13/2021	NL	1.00	1.00	695.00		695.00
10/13/2021	HRW NI	Prepare for call wi			1.00	695.00	\$695.00
HRW Bill	10/13/2021	NL	0.10	0.10	695.00		69.50
10/13/2021	HRW NI	Email J. Morris re litigation (0.1).	: supplemental pr	roduction in notes	0.10	695.00	\$69.50
HRW Bill	10/13/2021	NL	0.20	0.20	695.00		139.00
10/13/2021	HRW NI	Send opposing councies litigation (0.		al production in	0.20	695.00	\$139.00

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-						<u>Hours</u>	Rate	Amount
LSC Bill	10/14/2021		NL	5.90	5.90	460.00		2,714.00
10/14/2021	LSC N	IL .	Assist with research, discovery documents depositions.			5.90	460.00	\$2,714.00
LSC Bill	10/14/2021		NL	0.50	0.50	460.00		230.00
10/14/2021	LSC N	īL	Research and corresp management docume			0.50	460.00	\$230.00
JNP Bill	10/15/2021		NL	0.20	0.20	1,295.00		259.00
10/15/2021	JNP N	IL	Conference with Joh upcoming deposition litigation including h	s and issues rel	lating to notes	0.20	1295.00	\$259.00
JNP Bill	10/15/2021		NL	0.10	0.10	1,295.00		129.50
10/15/2021	JNP N	īL	Review emails regardiscovery.	ding notes depo	ositions and	0.10	1295.00	\$129.50
JAM Bill	10/15/2021		NL	6.80	6.80	1,245.00		8,466.00
10/15/2021	JAM N	īL	Tel c. w/ J. Seery, D. re: preparation for de Winograd, L. Canty related matters (0.2); e-mails to L. Canty, exhibits (0.4); tel c. v (0.2); tel c. w/ J. Pon e-mail to J. Seery, D. (0.5); e-mail to J. See LP Agreement (0.3); Winograd re: manage (0.1).	epositions (1.7) re: depositions, prepare for de H. Winograd re w/ G. Demo re: nerantz re: note . Klos re: prior ery, D. Klos, H e-mail to J. Se	; tel c. w/ H. exhibits, and positions (3.1); deposition depositions slitigation (0.3); court filings . Winograd re: ery, D. Klos, H.	6.80	1245.00	\$8,466.00
LSC Bill	10/15/2021		NL	3.10	3.10	460.00		1,426.00
10/15/2021	LSC N	īL	Research, retrieve, as connection with Note correspondence rega and correspondence	es Litigation an rding the same	d (2.6); research	3.10	460.00	\$1,426.00
GVD	10/15/2021		NL	1.60	1.60	950.00		1,520.00

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						Hours	Rate	Amount
Bill						110415	<u>1tate</u>	7 IIIIO GIII
10/15/2021	GVD	NL	Attend conference re pro	eparation for r	notes litigation	1.60	950.00	\$1,520.00
HRW Bill	10/15/202	21	NL	1.50	1.50	695.00		1,042.50
10/15/2021	HRW	NL	Review productions from notes litigations (1.5).	m Highland to	defendants in	1.50	695.00	\$1,042.50
HRW Bill	10/15/202	21	NL	0.40	0.40	695.00		278.00
10/15/2021	HRW	NL	Communicate with L. C. Highland to defendants			0.40	695.00	\$278.00
HRW Bill	10/15/202	21	NL	1.60	1.60	695.00		1,112.00
10/15/2021	HRW	NL	Call with J. Morris, G. I deposition prep for note			1.60	695.00	\$1,112.00
HRW Bill	10/15/202	21	NL	0.20	0.20	695.00		139.00
10/15/2021	HRW	NL	Call with J. Morris and for notes litigation (0.2)		eposition prep	0.20	695.00	\$139.00
JAM Bill	10/16/202	21	NL	7.80	7.80	1,245.00		9,711.00
10/16/2021	JAM	NL	Prepare for depositions PSZJ re: Deposition Ou (0.1); e-mail to L. Canty exhibits (0.1); tel c. w/ I production (0.1).	tline for Nanc , H. Winograd	y Dondero d re: deposition	7.80	1245.00	\$9,711.00
LSC Bill	10/16/202	21	NL	8.50	8.50	460.00		3,910.00
10/16/2021	LSC	NL	Preparation of exhibits in depositions and research regarding the same (4.9 connection with hearing including legal research	n discovery do); preparation ; on motions to	cuments of materials in dismiss,	8.50	460.00	\$3,910.00
HRW Bill	10/16/202	21	NL	3.80	3.80	695.00		2,641.00
10/16/2021	HRW	NL	Review supplemental H litigation (3.8).	CMFA produc	ction for notes	3.80	695.00	\$2,641.00

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						<u>Hours</u>	Rate	Amount
HRW Bill	10/16/202	1	NL	0.40	0.40	695.00		278.00
10/16/2021	HRW	NL	Communicate with L. HCMFA production f			0.40	695.00	\$278.00
HRW Bill	10/16/202	1	NL	0.20	0.20	695.00		139.00
10/16/2021	HRW	NL	Email with C. Mackle production for notes l			0.20	695.00	\$139.00
JNP Bill	10/17/202	1	NL	0.10	0.10	1,295.00		129.50
10/17/2021	JNP	NL	Review emails regard	ing depositio	ons.	0.10	1295.00	\$129.50
JAM Bill	10/17/202	1	NL	11.00	11.00	1,245.00		13,695.00
10/17/2021	JAM	NL	Prepare for deposition Seery re: depositions, Litigation (1.2); e-ma re: exhibits (0.3); e-m reporter re: deposition	facts and strails w H. Wine ails w/ defen	ategy for Notes ograd, L. Canty	11.00	1245.00	\$13,695.00
LSC Bill	10/17/202	1	NL	2.00	2.00	460.00		920.00
10/17/2021	LSC	NL	Preparation of exhibit depositions and resear regarding the same.			2.00	460.00	\$920.00
HRW Bill	10/17/202	1	NL	8.00	8.00	695.00		5,560.00
10/17/2021	HRW	NL	Review supplemental litigation (8.0).	HCMFA pro	oduction for notes	8.00	695.00	\$5,560.00
HRW Bill	10/17/202	1	NL	0.80	0.80	695.00		556.00
10/17/2021	HRW	NL	Review emails from J documents for deposit			0.80	695.00	\$556.00
HRW Bill	10/17/202	1	NL	0.20	0.20	695.00		139.00
10/17/2021	HRW	NL	Send email to J. Morr from Highland to defe			0.20	695.00	\$139.00

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			(0.2).			<u>Hours</u>	Rate	<u>Amount</u>
JNP Bill	10/18/202	:1	NL	1.00	1.00	1,295.00		1,295.00
10/18/2021	JNP	NL	Review motion to disminotes litigation.	ss and opposit	ion regarding	1.00	1295.00	\$1,295.00
JNP Bill	10/18/202	:1	NL	0.90	0.90	1,295.00		1,165.50
10/18/2021	JNP	NL	Conference with John A regarding Nancy Donde			0.90	1295.00	\$1,165.50
JAM Bill	10/18/202	:1	NL	13.90	13.90	1,245.00		17,305.50
10/18/2021	JAM	NL	Prepare for depositions depositions (0.2); Nanctel c. w/ J. Seery (partial Dondero deposition (0.8 Nancy Dondero deposition)	y Dondero der l), J. Pomeran B); tel c. w/ D.	oosition (7.0); tz re: Nancy	13.90	1245.00	\$17,305.50
LSC Bill	10/18/202	:1	NL	7.90	7.90	460.00		3,634.00
10/18/2021	LSC	NL	Prepare for and assist at Dondero.	deposition of	Susan	7.90	460.00	\$3,634.00
GVD Bill	10/18/202	.1	NL	0.10	0.10	950.00		95.00
10/18/2021	GVD	NL	Correspondence with L.	Canty re depo	osition issues	0.10	950.00	\$95.00
GVD Bill	10/18/202	:1	NL	0.20	0.20	950.00		190.00
10/18/2021	GVD	NL	Conference with J. Mor	ris re notes liti	gation strategy	0.20	950.00	\$190.00
GVD Bill	10/18/202	.1	NL	4.50	4.50	950.00		4,275.00
10/18/2021	GVD	NL	Attend deposition of N.	Dondero (par	tial)	4.50	950.00	\$4,275.00
GVD Bill	10/18/202	:1	NL	0.20	0.20	950.00		190.00
10/18/2021	GVD	NL	Review WilmerHale and Company Act issues	alysis of Inves	tment	0.20	950.00	\$190.00
HRW	10/18/202	:1	NL	3.50	3.50	695.00		2,432.50

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						<u>Hours</u>	Rate	Amount
Bill								
10/18/2021	HRW	NL	Review supplemental litigation (3.5).	al HCMFA pro	duction for notes	3.50	695.00	\$2,432.50
HRW Bill	10/18/202	21	NL	6.00	6.00	695.00		4,170.00
10/18/2021	HRW	NL	Deposition of Nancy (6.0).	y Dondero for r	notes litigation	6.00	695.00	\$4,170.00
HRW Bill	10/18/202	21	NL	0.50	0.50	695.00		347.50
10/18/2021	HRW	NL	Review Waterhouse	deposition out	line (0.5).	0.50	695.00	\$347.50
JNP Bill	10/19/202	21	NL	1.40	1.40	1,295.00		1,813.00
10/19/2021	JNP	NL	Continue to prepare dismiss.	for hearing on	motion to	1.40	1295.00	\$1,813.00
JNP Bill	10/19/202	21	NL	0.10	0.10	1,295.00		129.50
10/19/2021	JNP	NL	Review and respond Dondero plan propo			0.10	1295.00	\$129.50
JAM Bill	10/19/202	21	NL	14.60	14.60	1,245.00		18,177.00
10/19/2021	JAM	NL	Prepare for Waterho Waterhouse deposit G. Demo and/or H. Seery re: Waterhous Demo, H. Winograc (0.3); tel c. w/ J. See	ion (including to Winograd) (10) se deposition (0) I re: Waterhous	multiple calls with .2); tel c. w/ J. 0.1); tel c. w/ G. se deposition	14.60	1245.00	\$18,177.00
LSC Bill	10/19/202	21	NL	11.30	11.30	460.00		5,198.00
10/19/2021	LSC	NL	Prepare for and assi Waterhouse.	st at deposition	of Frank	11.30	460.00	\$5,198.00
GVD Bill	10/19/202	21	NL	0.20	0.20	950.00		190.00
10/19/2021	GVD	NL	Conference with J. S deposition	Seery re issues	re Dondero	0.20	950.00	\$190.00
GVD	10/19/202	21	NL	1.10	1.10	950.00		1,045.00

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5.11						<u>Hours</u>	Rate	Amount
Bill								
10/19/2021	GVD 1	NL	Review issues re app	olication of med	diation privilege	1.10	950.00	\$1,045.00
GVD Bill	10/19/2021		NL	0.60	0.60	950.00		570.00
10/19/2021	GVD 1	NL	Multiple conference Morris re status of V		U	0.60	950.00	\$570.00
GVD Bill	10/19/2021		NL	4.60	4.60	950.00		4,370.00
10/19/2021	GVD 1	NL	Attend Waterhouse	deposition (par	tial)	4.60	950.00	\$4,370.00
HRW Bill	10/19/2021		NL	9.50	9.50	695.00		6,602.50
10/19/2021	HRW 1	NL	Deposition of Frank (9.5).	Waterhouse fo	r notes litigation	9.50	695.00	\$6,602.50
HRW Bill	10/19/2021		NL	1.50	1.50	695.00		1,042.50
10/19/2021	HRW 1	NL	Review Waterhouse	deposition out	line (1.5).	1.50	695.00	\$1,042.50
HRW Bill	10/19/2021		NL	1.80	1.80	695.00		1,251.00
10/19/2021	HRW 1	NL	Review supplemental litigation (1.8).	ıl HCMFA prod	duction for notes	1.80	695.00	\$1,251.00
HRW Bill	10/19/2021		NL	0.50	0.50	695.00		347.50
10/19/2021	HRW 1	NL	Calls with G. Demo deposition (0.5).	and J. Morris r	e: Waterhouse	0.50	695.00	\$347.50
HRW Bill	10/19/2021		NL	0.10	0.10	695.00		69.50
10/19/2021	HRW 1	NL	Call with J. Morris r	e: Waterhouse	deposition (0.1).	0.10	695.00	\$69.50
HRW Bill	10/19/2021		NL	0.30	0.30	695.00		208.50
10/19/2021	HRW 1	NL	Email with G. Demo	and J. Elkin re	e: mediation	0.30	695.00	\$208.50

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						<u>Hours</u>	Rate	Amount
HRW Bill	10/19/2021		NL	0.30	0.30	695.00		208.50
10/19/2021	HRW 1	NL	Research issue of FRE from mediation (0.3).	408 and use	of documents	0.30	695.00	\$208.50
JAM Bill	10/20/2021		NL	6.80	6.80	1,245.00		8,466.00
10/20/2021	JAM 1	NL	Prepare for Dondero d Canty re: exhibits for I Dondero deposition (c Seery re: notes litigation reporter re: Seery deportular re: notes litigation J. Seery re: notes litigation (0.1 Hendrix re: deposition c. w/ J. Seery re: notes Sharp re: forensic anal	Dondero depo ancelled) (0.3); e-ma osition (0.1); d re: discove ation (0.5); te); tel c. w/ D s in notes liti litigation (0.	osition (0.2); 2); tel c. w/ J. ails w/ court e-mails w/ D. ery (0.6); tel c. w/ el c. w/ G. Demo b. Klos, K. gation (0.2); tel .3); tel c. w/ B.	6.80	1245.00	\$8,466.00
LSC Bill	10/20/2021		NL	1.90	1.90	460.00		874.00
10/20/2021	LSC 1	NL	Prepare for anticipated deposition (ultimately		d related entities	1.90	460.00	\$874.00
GVD Bill	10/20/2021		NL	0.10	0.10	950.00		95.00
10/20/2021	GVD 1	NL	Correspondence with Jissues	J. Pomerantz	re mediation	0.10	950.00	\$95.00
GVD Bill	10/20/2021		NL	0.10	0.10	950.00		95.00
10/20/2021	GVD 1	NL	Correspondence with litigation	H. Winograd	re HCMFA notes	0.10	950.00	\$95.00
HRW Bill	10/20/2021		NL	0.30	0.30	695.00		208.50
10/20/2021	HRW 1	NL	Review HCMFA disco	overy in notes	s litigation (0.3).	0.30	695.00	\$208.50
HRW Bill	10/20/2021		NL	0.10	0.10	695.00		69.50
10/20/2021	HRW 1	NL	Email G. Demo re: HC (0.1).	CMFA advers	sary proceeding	0.10	695.00	\$69.50
HRW	10/20/2021		NL	0.10	0.10	695.00		69.50

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Bill						<u>Hours</u>	Rate	Amount
DIII								
10/20/2021	HRW	NL	Email J. Morris re: I in notes litigation (0		mental discovery	0.10	695.00	\$69.50
HRW Bill	10/20/202	21	NL	0.10	0.10	695.00		69.50
10/20/2021	HRW	NL	Review email from to HCMFA in notes		cument requests	0.10	695.00	\$69.50
HRW Bill	10/20/202	21	NL	0.10	0.10	695.00		69.50
10/20/2021	HRW	NL	Review email from document requests t (0.1).			0.10	695.00	\$69.50
JNP Bill	10/21/202	21	NL	0.70	0.70	1,295.00		906.50
10/21/2021	JNP	NL	Continue to prepare	for motion to di	smiss hearing.	0.70	1295.00	\$906.50
JAM Bill	10/21/202	21	NL	8.30	8.30	1,245.00		10,333.50
10/21/2021	JAM	NL	E-mail to J. Vaughn for promissory notes prepare for deposition financials concerning loans" (0.6); tel c. wo of forgivable loans" deposition (1.6); See Pomerantz re: Seery	s (0.2); meet w/ on (0.8); review g "practice of for // J. Seery, D. K (0.1); prepare f ery deposition (4	J. Seery to audited orgivable los re: "practice or J. Seery 4.8); tel c. w/ J.	8.30	1245.00	\$10,333.50
GVD Bill	10/21/202	21	NL	2.10	2.10	950.00		1,995.00
10/21/2021	GVD	NL	Attend J. Seery depo	osition (partial)		2.10	950.00	\$1,995.00
HRW Bill	10/21/202	21	NL	3.00	3.00	695.00		2,085.00
10/21/2021	HRW	NL	Deposition of Jim S	eery for notes li	tigation (3.0).	3.00	695.00	\$2,085.00
HRW Bill	10/21/202	21	NL	0.10	0.10	695.00		69.50
10/21/2021	HRW	NL	Email J. Pomerantz	re: notes litigati	on MTD (0.1).	0.10	695.00	\$69.50
HRW	10/21/202	21	NL	0.20	0.20	695.00		139.00

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						Hours	Rate	Amount
Bill								
10/21/2021	HRW	NL	Review notes litigation	MTD (0.2).		0.20	695.00	\$139.00
HRW Bill	10/21/202	21	NL	0.10	0.10	695.00		69.50
10/21/2021	HRW	NL	Review J. Morris email and notes litigation (0.1		arch for MSJ	0.10	695.00	\$69.50
JAM Bill	10/22/202	21	NL	3.70	3.70	1,245.00		4,606.50
10/22/2021	JAM	NL	E-mail to D. Dandenear (0.2); e-mails w/ D. Kloloans (0.3); tel c. w/ J. S. (0.2); e-mails w/ J. Vau H. Winograd re: metadaw/ J. Vaughn, T. Surger (0.3); prepare for depose Canty re: proof of payn (0.2); tel c. w/ J. Seery w/ J. Seery re: notes liti	os re: proof of Seery re: Seer ghn, T. Surge ata for the not nt re: metadat sitions (1.7); en nent documen re: notes litiga	Payment on y deposition ent, G. Demo, tes (0.4); tel c. a for the notes e-mail to L. t production	3.70	1245.00	\$4,606.50
GVD Bill	10/22/202	21	NL	0.50	0.50	950.00		475.00
10/22/2021	GVD	NL	Conference with J. Mor issues in notes litigation		nerantz re open	0.50	950.00	\$475.00
JAM Bill	10/23/202	21	NL	3.50	3.50	1,245.00		4,357.50
10/23/2021	JAM	NL	E-mail to defense count to D. Deitz-Perez re: codeposition (0.1); e-mail document production (0.2.7); tel c. w/ J. Seery notes litigation (0.1).	osts for cancel s w/ T. Surge 0.2); prepare f	ling Dondero nt, P. Giep re: for depositions	3.50	1245.00	\$4,357.50
JAM Bill	10/24/202	21	NL	4.30	4.30	1,245.00		5,353.50
10/24/2021	JAM	NL	Review documents and (including sending doct Winograd for production Notes Litigation facts a	uments to L. (on) (4.0); tel c	Canty, H w/ J. Seery re:	4.30	1245.00	\$5,353.50

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-						<u>Hours</u>	Rate	Amount
HRW Bill	10/24/202	:1	NL	3.00	3.00	695.00		2,085.00
10/24/2021	HRW	NL	Draft second HCMFA	notes compla	aint (3.0).	3.00	695.00	\$2,085.00
HRW Bill	10/24/202	:1	NL	0.20	0.20	695.00		139.00
10/24/2021	HRW	NL	Review documents for	r notes produc	etion (0.2).	0.20	695.00	\$139.00
JNP Bill	10/25/202	:1	NL	1.00	1.00	1,295.00		1,295.00
10/25/2021	JNP	NL	Continue to prepare for dismiss.	or oral argume	ent on motion to	1.00	1295.00	\$1,295.00
JNP Bill	10/25/202	:1	NL	0.10	0.10	1,295.00		129.50
10/25/2021	JNP	NL	Review emails regard	ing notes litiga	ation discovery.	0.10	1295.00	\$129.50
JAM Bill	10/25/202	:1	NL	8.00	8.00	1,245.00		9,960.00
10/25/2021	JAM	NL	Work on Dondero dep J. Seery re: notes litig H. Winograd, P. Jeffri (0.3); prep session w/ Winograd (1.5); e-man document production counsel re: deposition Winograd re: notes lit document production	ation (0.1); co les re: docume D. Klos, K. H il to defense c (0.3); e-mails schedule (0.1 igation (0.2);	emmunications w/ ent production lendrix, H. ounsel re: w/ defense); tel c. w/ H.	8.00	1245.00	\$9,960.00
GVD Bill	10/25/202	:1	NL	0.40	0.40	950.00		380.00
10/25/2021	GVD	NL	Review limited partne duty issues and corres same			0.40	950.00	\$380.00
GVD Bill	10/25/202	:1	NL	0.30	0.30	950.00		285.00
10/25/2021	GVD	NL	Review and comment HCMFA	on new note a	adversary for	0.30	950.00	\$285.00

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						<u>Hours</u>	Rate	Amount
HRW Bill	10/25/2021	l	NL	2.50	2.50	695.00		1,737.50
10/25/2021	HRW	NL	Review HCMFA su	pplemental doc	uments (2.5).	2.50	695.00	\$1,737.50
HRW Bill	10/25/2021	l	NL	1.50	1.50	695.00		1,042.50
10/25/2021	HRW	NL	Review HCRE supp	lemental docun	nents (1.5).	1.50	695.00	\$1,042.50
HRW Bill	10/25/2021	l	NL	0.10	0.10	695.00		69.50
10/25/2021	HRW	NL	Call with J. Morris (0.1).	e: Hendrix and	Klos depo prep	0.10	695.00	\$69.50
HRW Bill	10/25/2021	l	NL	1.50	1.50	695.00		1,042.50
10/25/2021	HRW	NL	Call with J. Morris, prep (1.5).	D. Klos, K. He	ndrix re: depo	1.50	695.00	\$1,042.50
HRW Bill	10/25/2021	l	NL	0.30	0.30	695.00		208.50
10/25/2021	HRW	NL	Review HCMFA su	pplemental pro	duction (0.3).	0.30	695.00	\$208.50
HRW Bill	10/25/2021	l	NL	0.30	0.30	695.00		208.50
10/25/2021	HRW	NL	Review notes litigat (0.3).	ion supplement	al production	0.30	695.00	\$208.50
HRW Bill	10/25/2021	l	NL	0.50	0.50	695.00		347.50
10/25/2021	HRW	NL	Edit and review HC (0.5).	MFA second no	otes complaint	0.50	695.00	\$347.50
HRW Bill	10/25/2021	l	NL	0.20	0.20	695.00		139.00
10/25/2021	HRW	NL	Email J. Morris re:	HCMFA notes	discovery (0.2).	0.20	695.00	\$139.00
HRW Bill	10/25/2021	l	NL	1.50	1.50	695.00		1,042.50
10/25/2021	HRW	NL	Research issues for litigation (1.5).	summary judgn	nent in notes	1.50	695.00	\$1,042.50
JNP	10/26/2021	l	NL	0.40	0.40	1,295.00		518.00

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						<u>Hours</u>	Rate	Amount
Bill								
10/26/2021	JNP	NL	Conference with John depositions and strateg			0.40	1295.00	\$518.00
JNP Bill	10/26/202	.1	NL	1.10	1.10	1,295.00		1,424.50
10/26/2021	JNP	NL	Continue to review cas hearing on motion to d		preparation for	1.10	1295.00	\$1,424.50
JAM Bill	10/26/202	21	NL	9.20	9.20	1,245.00		11,454.00
10/26/2021	JAM	NL	Review of transcripts a issues/facts (3.2); meet prepare for depositions re: notes litigation (0.4 including review of expense counsel re: dis re: Dondero compensa Pomerantz re: Dondero issues (0.3).	t w/ D. Klos, s (2.7); tel c. v.); prepare for pert report (1 covery (0.4); tion (0.4); tel	K. Hendrix to w/J. Pomerantz depositions, .8); e-mails w/ meet w/D. Klos c. w/J.	9.20	1245.00	\$11,454.00
GVD Bill	10/26/202	.1	NL	0.40	0.40	950.00		380.00
10/26/2021	GVD	NL	Conference with J. Mo preparation for Klos de		los re	0.40	950.00	\$380.00
HRW Bill	10/26/202	.1	NL	2.00	2.00	695.00		1,390.00
10/26/2021	HRW	NL	Research issues for con	nsolidation of	cases (2.0).	2.00	695.00	\$1,390.00
HRW Bill	10/26/202	21	NL	1.20	1.20	695.00		834.00
10/26/2021	HRW	NL	Draft errata for opposi	tion to MTD	(1.2).	1.20	695.00	\$834.00
HRW Bill	10/26/202	<u>!</u> 1	NL	0.80	0.80	695.00		556.00
10/26/2021	HRW	NL	Review notes litigation production (0.8).	supplementa	al HCRE	0.80	695.00	\$556.00
HRW Bill	10/26/202	21	NL	0.10	0.10	695.00		69.50
10/26/2021	HRW	NL	Review J. Morris emai production in notes liti		e: Dondero	0.10	695.00	\$69.50

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						<u>Hours</u>	Rate	Amount
HRW Bill	10/26/202	21	NL	0.10	0.10	695.00		69.50
10/26/2021	HRW	NL	Review email from opposition in notes l			0.10	695.00	\$69.50
HRW Bill	10/26/202	21	NL	0.20	0.20	695.00		139.00
10/26/2021	HRW	NL	Review Dondero res notes litigation (0.2)		overy requests in	0.20	695.00	\$139.00
HRW Bill	10/26/202	21	NL	0.10	0.10	695.00		69.50
10/26/2021	HRW	NL	Email J. Morris re: Fin notes litigation (0.		ental production	0.10	695.00	\$69.50
HRW Bill	10/26/202	21	NL	0.10	0.10	695.00		69.50
10/26/2021	HRW	NL	Email J. Morris and opposition to MTD i			0.10	695.00	\$69.50
HRW Bill	10/26/202	21	NL	0.10	0.10	695.00		69.50
10/26/2021	HRW	NL	Email local counsel in notes litigation (0.		oposition to MTD	0.10	695.00	\$69.50
HRW Bill	10/26/202	21	NL	0.10	0.10	695.00		69.50
10/26/2021	HRW	NL	Review email from lopposition to MTD is			0.10	695.00	\$69.50
JNP Bill	10/27/202	21	NL	1.30	1.30	1,295.00		1,683.50
10/27/2021	JNP	NL	Continue to prepare dismiss.	for hearing on	motion to	1.30	1295.00	\$1,683.50
JNP Bill	10/27/202	21	NL	0.30	0.30	1,295.00		388.50
10/27/2021	JNP	NL	Conference with Greand J. Seery regarding depositions.			0.30	1295.00	\$388.50
JAM	10/27/202	21	NL	9.00	9.00	1,245.00		11,205.00

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-						<u>Hours</u>	Rate	Amount
Bill								
10/27/2021	JAM	NL	Prepare for deposition counsel re: document Klos depositions (7.7 Pomerantz, G. Demo unrelated matters) (0.	production (0); tel c. w/ J. S re: depositions	.2); Hendrix and eery, J.	9.00	1245.00	\$11,205.00
GVD Bill	10/27/202	21	NL	0.50	0.50	950.00		475.00
10/27/2021	GVD	NL	Attend K. Hendrix de	position (parti	ial)	0.50	950.00	\$475.00
HRW Bill	10/27/202	21	NL	0.50	0.50	695.00		347.50
10/27/2021	HRW	NL	Review HCMFA supplitigations (0.5).	plemental docu	uments for notes	0.50	695.00	\$347.50
HRW Bill	10/27/202	21	NL	0.10	0.10	695.00		69.50
10/27/2021	HRW	NL	Email J. Morris re: H supplemental docume			0.10	695.00	\$69.50
HRW Bill	10/27/202	21	NL	2.00	2.00	695.00		1,390.00
10/27/2021	HRW	NL	Research re: summary litigations (2.0).	y judgment sta	ndard for notes	2.00	695.00	\$1,390.00
HRW Bill	10/27/202	21	NL	0.10	0.10	695.00		69.50
10/27/2021	HRW	NL	Email local counsel ro MTD (0.1).	e: errata for op	pposition briefs to	0.10	695.00	\$69.50
HRW Bill	10/27/202	21	NL	1.00	1.00	695.00		695.00
10/27/2021	HRW	NL	Draft errata for oppos	sition briefs to	MTD (1.0).	1.00	695.00	\$695.00
HRW Bill	10/27/202	21	NL	3.00	3.00	695.00		2,085.00
10/27/2021	HRW	NL	Hendrix deposition for	or notes litigati	ions (3.0).	3.00	695.00	\$2,085.00
HRW Bill	10/27/202	21	NL	2.50	2.50	695.00		1,737.50
10/27/2021	HRW	NL	Klos deposition for no	otes litigations	s (2.5).	2.50	695.00	\$1,737.50

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						<u>Hours</u>	Rate	Amount
JNP Bill	10/28/202	21	NL	2.00	2.00	1,295.00		2,590.00
10/28/2021	JNP	NL	Continue to prepare for dismiss.	hearing on mo	otion to	2.00	1295.00	\$2,590.00
JAM Bill	10/28/202	21	NL	6.70	6.70	1,245.00		8,341.50
10/28/2021	JAM	NL	Amend six deposition n counsel re: Dondero del Seery re: notes litigation L. Canty, P. Jeffries re: exhibits (0.6); tel c. w/ I litigation (0.8); prepare (4.1); tel c. w/ G. Demo c. w/ D. Rukavina, H. W.	position (0.1); n (0.5); common Dondero deport. Winograd refor Dondero designers notes litig	tel c. w/ J. unications w/ sition and e: notes leposition ation (0.2); tel	6.70	1245.00	\$8,341.50
GVD Bill	10/28/202	21	NL	0.20	0.20	950.00		190.00
10/28/2021	GVD	NL	Conference with J. Mor discovery issues	ris re potentia	expert	0.20	950.00	\$190.00
GVD Bill	10/28/202	21	NL	0.20	0.20	950.00		190.00
10/28/2021	GVD	NL	Conference with J. Mor notes litigation	ris re depositio	on issues re	0.20	950.00	\$190.00
HRW Bill	10/28/202	21	NL	0.80	0.80	695.00		556.00
10/28/2021	HRW	NL	Call with J. Morris re: n	otes litigation	s (0.8).	0.80	695.00	\$556.00
HRW Bill	10/28/202	21	NL	0.10	0.10	695.00		69.50
10/28/2021	HRW	NL	Review email from cour reports in notes litigation		ion for expert	0.10	695.00	\$69.50
HRW Bill	10/28/202	21	NL	0.20	0.20	695.00		139.00
10/28/2021	HRW	NL	Send counsel supplemental litigations and related to		n for notes	0.20	695.00	\$139.00

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						<u>Hours</u>	Rate	Amount
HRW Bill	10/28/202	21	NL	7.00	7.00	695.00		4,865.00
10/28/2021	HRW	NL	Research re: summary (7.0).	judgment in	notes litigation	7.00	695.00	\$4,865.00
HRW Bill	10/28/202	21	NL	0.20	0.20	695.00		139.00
10/28/2021	HRW	NL	Review and finalize er MTD in notes litigation		osition briefs to	0.20	695.00	\$139.00
HRW Bill	10/28/202	21	NL	0.20	0.20	695.00		139.00
10/28/2021	HRW	NL	Review and edit amend litigation (0.2).	ded deposition	on notices in notes	0.20	695.00	\$139.00
HRW Bill	10/28/202	21	NL	0.10	0.10	695.00		69.50
10/28/2021	HRW	NL	Email local counsel rein notes litigation (0.1)		eposition notices	0.10	695.00	\$69.50
JNP Bill	10/29/202	21	NL	2.50	2.50	1,295.00		3,237.50
10/29/2021	JNP	NL	Continue preparing for dismiss.	hearing on	motion to	2.50	1295.00	\$3,237.50
JNP Bill	10/29/202	21	NL	0.20	0.20	1,295.00		259.00
10/29/2021	JNP	NL	Conference with Jorda between motion to distinctes litigation.			0.20	1295.00	\$259.00
JNP Bill	10/29/202	21	NL	0.10	0.10	1,295.00		129.50
10/29/2021	JNP	NL	Review of NexPoint m designate experts.	otion to exte	end time to	0.10	1295.00	\$129.50
JMF Bill	10/29/202	21	NL	0.30	0.30	1,050.00		315.00
10/29/2021	JMF	NL	Review motions to ext deadlines.	end expert d	liscovery	0.30	1050.00	\$315.00
JAM	10/29/202	21	NL	11.90	11.90	1,245.00		14,815.50

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						<u>Hours</u>	Rate	Amount
Bill								
10/29/2021	JAM	NL	Prepare for Dondero deposition (4.2); Dondero deposition (including multiple calls with G. Demo, H. Winograd during breaks) (7.0); tel c. w/ G. Demo, H. Winograd re: post-deposition follow-up (0.5); tel c. w/ J. Seery re: Dondero deposition (0.2).			11.90	1245.00	\$14,815.50
GVD Bill	10/29/202	21	NL	2.80	2.80	950.00		2,660.00
10/29/2021	GVD	NL	Attend deposition of J.	Dondero (par	rtial)	2.80	950.00	\$2,660.00
GVD Bill	10/29/202	21	NL	0.40	0.40	950.00		380.00
10/29/2021	GVD	NL	Review emails re corre allocation	spondence re	prepayment	0.40	950.00	\$380.00
GVD Bill	10/29/202	21	NL	1.00	1.00	950.00		950.00
10/29/2021	GVD	NL	Multiple conferences w Winograd re status of I			1.00	950.00	\$950.00
HRW Bill	10/29/202	21	NL	5.00	5.00	695.00		3,475.00
10/29/2021	HRW	NL	Dondero deposition for (5.0).	consolidated	notes litigation	5.00	695.00	\$3,475.00
HRW Bill	10/29/202	21	NL	1.00	1.00	695.00		695.00
10/29/2021	HRW	NL	Research for summary notes litigation (1.0).	judgment in c	consolidated	1.00	695.00	\$695.00
HRW Bill	10/29/202	21	NL	0.50	0.50	695.00		347.50
10/29/2021	HRW	NL	Draft and review DC S and related documents	auter depositi (0.5).	on subpoena	0.50	695.00	\$347.50
HRW Bill	10/29/202	21	NL	0.20	0.20	695.00		139.00
10/29/2021	HRW	NL	Email with local couns subpoena (0.2).	el re: DC Sau	ter deposition	0.20	695.00	\$139.00

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						<u>Hours</u>	Rate	Amount
HRW Bill	10/29/202	21	NL	0.60	0.60	695.00		417.00
10/29/2021	HRW	NL	Calls with J. Morris deposition (0.6).	and G. Demo r	e: Dondero	0.60	695.00	\$417.00
HRW Bill	10/29/202	21	NL	0.20	0.20	695.00		139.00
10/29/2021	HRW	NL	Review Waterhouse	deposition tran	ascript (0.2).	0.20	695.00	\$139.00
HRW Bill	10/29/202	21	NL	0.30	0.30	695.00		208.50
10/29/2021	HRW	NL	Review NexPoint m deadlines (0.3).	notion to extend	discovery	0.30	695.00	\$208.50
HRW Bill	10/29/202	21	NL	0.10	0.10	695.00		69.50
10/29/2021	HRW	NL	Email HCMFA cour (0.1).	nsel re: depositi	on subpoena	0.10	695.00	\$69.50
JAM Bill	10/30/202	21	NL	4.30	4.30	1,245.00		5,353.50
10/30/2021	JAM	NL	Review documents (expert) deposition		r Alan Johnson	4.30	1245.00	\$5,353.50
JAM Bill	10/31/202	21	NL	5.00	5.00	1,245.00		6,225.00
10/31/2021	JAM	NL	Prepare for Johnson judgment (4.8); tel (0.2).			5.00	1245.00	\$6,225.00
HRW Bill	10/31/202	21	NL	2.20	2.20	695.00		1,529.00
10/31/2021	HRW	NL	Research and related NexPoint's motion (2.2).			2.20	695.00	\$1,529.00
HRW Bill	10/31/202	21	NL	0.80	0.80	695.00		556.00
10/31/2021	HRW	NL	Review productions	in notes litigati	ions (0.8).	0.80	695.00	\$556.00

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						<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
GVD Bill	11/01/202	21	NL	0.10	0.10	950.00		95.00
11/01/2021	GVD	NL	Correspondence with adversary	J. Morris re f	iling of HCMFA	0.10	950.00	\$95.00
GVD Bill	11/01/202	21	NL	0.60	0.60	950.00		570.00
11/01/2021	GVD	NL	Conference with Quin	n re status of	notes litigation	0.60	950.00	\$570.00
JAK Bill	11/01/202	21	NL	1.00	1.00	1,100.00		1,100.00
11/01/2021	JAK	NL	Strategy emails regard motion to dismiss amo Morris, and local co-c argument for objection Jeff Pomerantz (0.5);	ong Jeff Pomounsel (0.5);	erantz, John review outline of	1.00	1100.00	\$1,100.00
JAK Bill	11/01/202	21	NL	0.90	0.90	1,100.00		990.00
11/01/2021	JAK	NL	Begin outlining argum motion for arbitration.		ng on objection to	0.90	1100.00	\$990.00
GVD Bill	11/02/202	21	NL	0.30	0.30	950.00		285.00
11/02/2021	GVD	NL	Conference with J. Molitigation	orris re strate	gy for notes	0.30	950.00	\$285.00
GVD Bill	11/03/202	21	NL	1.20	1.20	950.00		1,140.00
11/03/2021	GVD	NL	Review draft argumen motion to compel arbi		to dismiss and	1.20	950.00	\$1,140.00
GVD Bill	11/03/202	21	NL	0.50	0.50	950.00		475.00
11/03/2021	GVD	NL	Initial conference with oral argument (0.3); A preparation for oral ar	ttend follow	up conference re	0.50	950.00	\$475.00
GVD Bill	11/04/202	21	NL	0.40	0.40	950.00		380.00
11/04/2021	GVD	NL	Conference with J. Mo Dondero deposition	orris re prepa	ration for	0.40	950.00	\$380.00

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					<u>Hours</u>	Rate	Amount
GVD Bill	11/04/2021	NL	0.20	0.20	950.00		190.00
11/04/2021	GVD NL	Conference with J. Por of Dondero deposition		J. Morris re status	0.20	950.00	\$190.00
		2			377.30		\$361,824.00
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EXHIBIT 181

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IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

In re	§
HIGHLAND CAPITAL MANAGEMENT,	§ Chapter 11
L.P.,	§ Case No. 19-34054-sgj11
Debtor.	§
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§ § §
Plaintiff, v.	\$ \$ \$ Adv. No. 21-03004
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. Defendant.	§ § § § §

DECLARATION OF DENNIS C. SAUTER, JR.

- I, Dennis C. Sauter, Jr., hereby swear under oath and penalty of perjury pursuant to the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:
- 1. My name is Dennis C. Sauter, Jr. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise qualified to give this Declaration. I have personal knowledge of the facts stated in this Declaration, or such facts are known to me from my review of the books and records of Highland Capital Management Fund Advisors, L.P. ("HCMFA").
- 2. I am an attorney licensed to practice law in the State of Texas and have been such since 2001.

EXHIBIT "A"

- 3. While I provided limited legal services to Highland Capital Management, L.P. (the "<u>Debtor</u>") and its affiliated entities as outside counsel before I became in-house counsel, those services were limited to real estate transactions having nothing to do with the facts discussed in this Declaration.
- 4. HCMFA is a registered advisor under the Investment Advisors Act of 1940. CITE. As such, HCMFA advises various independent funds, which, in turn, are investment vehicles for a large number of investors.
- 5. HCMFA has always had very few employees. During 2019, for example, HCMFA had only 7 to 9 employees.
- 6. Instead, most of the services needed by HCMFA to transact its business were provided by the Debtor pursuant to that certain *Second Amended and Restated Shared Services Agreement* dated February 8, 2013 (the "Shared Services Agreement"), a true and correct copy of which is attached hereto as Exhibit 1.
- 7. This was standard business practices for the Debtor and various other affiliated companies, including other advisers within the Debtor's and its affiliates "complex" of businesses: the Debtor would employ most of the employees and then share those employees with HCMFA and other "complex" entities in exchange for payments by HCMFA and such other entities.
- 8. Thus, under the Shared Services Agreement, employees of the Debtor (many of whom were highly trained and specialized) provided many of the key services to HCMFA on an as-needed basis. These services included legal, accounting, regulatory, compliance, IT, and tax services, among others. Additionally, under the Shared Services Agreement the Debtor provided critical electronic infrastructure to HCMFA and other "complex" entities, such that the books and records, and e-mail communications, of HCMFA were actually stored on the Debtor's server.
 - 9. These facts are very important to the issues I will discuss below.

- 10. On January 22, 2021, the Debtor filed its Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate (the "Complaint") against HCMFA, thereby initiating this Adversary Proceeding.
- 11. The Complaint concerns two promissory notes each dated May 2, 2019 (the "Notes") that the Debtor seeks a judgment against HCMFA for: (i) a note for \$5 million; and (ii) a note for \$2.4 million.
 - 12. On March 1, 2021, HCMFA filed its *Defendant's Original Answer* (the "Answer").
- 13. At the time that the Debtor filed the Complaint, I promptly undertook an internal review of the background facts concerning the Notes. I had no knowledge of them since I had not been employed by HCMFA, and the few employees of HCMFA had no knowledge of the Notes. I also discussed the Notes with James Dondero, formerly the CEO of the Debtor, and Mr. Dondero could not recall the genesis of the Notes. My review of the limited books and records of HCMFA that were not in the possession of the Debtor did not reveal any background facts regarding the Notes or the existence of the Notes.
- 14. Normally, I would have discussed the Notes with employees of the Debtor who also provided services to HCMFA pursuant to the Shared Services Agreement in order to assess what defenses or affirmative defenses to the Complaint existed. However, in this instance I was precluded from doing so.
- 15. First, attached hereto as Exhibit 2 is a true and correct copy of an e-mail exchange between me and Mr. James Seery dated September 17, 2020. Mr. Seery was and remains the Chief Executive Officer of the Debtor. As stated in Exhibit 2, Mr. Seery was informing me that Debtor employees had been instructed not to discuss with me anything that is "inimical" to the interests of the Debtor, and that they would be terminated if they did so. This e-mail communication comports with other communications between myself and Mr. Seery and/or Debtor's counsel,

where I was cautioned not to discuss with Debtor employees matters that may be adverse to the Debtor.

- 16. Second, by the time of the filing of the Complaint, the Court had entered a preliminary injunction against Mr. Dondero, a true and correct copy of which is attached hereto as Exhibit 3. That injunction prohibited Mr. Dondero from "directly or indirectly . . . communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided." As the information concerning the Notes was background information and not related to "services currently provided," I was concerned that, if I discussed the Notes with the Debtor's employees, the Debtor would argue that either Mr. Dondero or I violated the Court's injunction.
- 17. In sum, after the Complaint was filed, no one at HCMFA knew anything about the Notes, and I was precluded from contacting the people that would have known something about the notes, *i.e.* the Debtor's employees, to discuss what they may have known. I also had very limited access to HCMFA books and records and, even if I had had full access, I would not have known what relevant books and records to search for in the many millions of files without first obtaining a generalized background of the facts regarding the Notes from Debtor employees.
- 18. I then worked with outside counsel at Munsch Hardt Kopf & Harr, P.C. to review the Complaint and prepare and file the Answer. That original Answer did not contain any affirmative defenses because, as explained above, no one at HCMFA knew of any facts that might give rise to an affirmative defense.
- 19. The situation changed by mid-April, 2021. As of late February, 2021, the Debtor terminated the Shared Services Agreement and terminated most of its former employees. Many of those employees then formed their own company, Skyview Group, which then contracted with HCMFA (and others) to continue providing essentially the same services that they had previously provided under the Shared Services Agreement. Additionally, the Debtor provided access to

HCMFA of much of its books and records (although not all). Thus, as of March, 2021, I was able to communicate with most former Debtor employees and to access the books and records of HCMFA without fear of violating any court order.

- 20. March, 2021, was exceedingly busy, to say the least. With the termination of the Shared Services Agreement, HCMFA, other entities that I am general counsel to, and I were preoccupied with transitioning the services that the Debtor had been providing for more than a decade to a new entity, using new infrastructure, new offices, new networks, etc., all for the primary goal of ensuring a smooth and uninterrupted continuity of business and services provided by HCMFA and others to third parties.
- 21. By mid-April, 2021, the situation had calmed down to the point that I was able to discuss the Notes with former employees, most importantly Frank Waterhouse ("Waterhouse") and Will Mabry ("Mabry"). Mabry in particular was able to provide me internal documents and memorandums that I had not previously known about or had access to that helped with the factual background of the Notes.
- 22. From these discussions and documents, I have been able to understand the factual background concerning the Notes, ultimately concluding that the Notes were signed by mistake by Waterhouse without authority from HCMFA and have no consideration and were never intended to be debt instruments of HCMFA.
 - 23. My investigation has revealed the following.
- 24. One of the funds that HCMFA advises is Highland Global Allocation Fund ("GAF"). In March, 2018, GAF sold equity interests it held in TerreStar. As part of this, it was necessary to calculate the "net asset value" ("NAV") of these securities and of GAF assets. HCMFA was responsible for advising on the NAV. In turn, pursuant to the Shared Services Agreement and in accordance with applicable compliance and operating procedures, the Debtor

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was responsible to HCMFA to calculate the NAV, and the Debtor had several employees charged with these and similar calculations as part of the Debtor's routine business services and as part of what the Debtor regularly provided to HCMFA and affiliated companies.

- 25. The Debtor made a mistake in calculating the NAV (the "NAV Error"). The NAV Error was discovered in early 2019 as GAF was being converted from an open-ended fund to a closed-ended fund. The Securities and Exchange Commission opened an investigation, and various employees and representatives of the Debtor, HCMFA, and GAF worked with the SEC to correct the error and to compensate GAF and the various investors in GAF harmed by the NAV Error.
- 26. Ultimately, and working with the SEC, the Debtor determined that the losses from the NAV Error to GAF and its shareholders amounted to \$7.5 million: (i) \$6.1 million for the NAV Error itself, as well as rebating related advisor fees and processing costs; and (ii) \$1.4 million of losses to the shareholders of GAF.
- 27. HCMFA accepted responsibility for the NAV Error and paid out \$5,186,496 on February 15, 2019 and \$2,398,842 on May 21, 2019. I am not sure of the flow of funds, whether the funds flowed through HCMFA or were paid by the Debtor on behalf of HCMFA, and discovery will likely clear that up. Either way, however, the payments were of HCMFA funds and on behalf of HCMFA.
- 28. In turn, the Debtor accepted responsibility to HCMFA for having caused the NAV Error, and the Debtor ultimately, whether through insurance or its own funds, compensated HCMFA for the above payments.
- 29. Returning to the Notes, Waterhouse was the Chief Financial Officer of both the Debtor and HCMFA during the above events and at the time he signed the Notes.

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- 30. It appears clear that Waterhouse made a mistake in preparing and signing the Notes. First, , the Notes correspond very closely to the ultimate \$5,186,496 and \$2,398,842 payments. Second, it appears that Waterhouse assumed, incorrectly, that the funds being paid by the Debtor were a loan to HCMFA, instead of payments as compensation and restitution to HCMFA for the Debtor having caused the NAV Error. Third, it therefore appears that Waterhouse prepared the Notes for some internal accounting or other purpose, but without there being actual consideration for the Notes and without any intention on the part of the Debtor and HCMFA that there be Notes or that there be a loan transaction.
- 31. I also note that, as of May, 2019, HCMFA had executed other demand notes payable to the Debtor. On April 15, 2019, the Debtor executed that certain *Acknowledgement from HCMLP*, a true and correct copy of which is attached hereto as Exhibit 4. By the same, the Debtor agreed not to demand payment of these notes prior to May 31, 2021, because HCMFA believed that it would not be able to repay those notes prior to that time. It is illogical that, in light of the same, the Debtor would shortly thereafter lend an additional \$7.4 million to HCMFA. Rather, as my investigation has shown, the Debtor did not lend the funds to HCMFA but instead paid the funds, directly or indirectly, to compensate HCMFA for the NAV Error, which was the Debtor's error and therefore its obligation to correct and compensate for.
- 32. Therefore, in light of having learned of these facts in mid to late-April, 2019, HCMFA now believes that it has affirmative defenses to the Notes in the nature of mutual mistake, void for lack of consideration, and no proper authority of Waterhouse to sign the Notes.
- 33. Neither I, nor HCMFA, nor any of HCMFA's agents, have been less than diligent in investigating the Notes and the Complaint.
- 34. HCMFA respectfully requests that it be granted leave to assert these affirmative defenses in the Adversary Proceeding.

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Signed: May ______, 2021

DENNIS C. SAUTER, JR.

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SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT

THIS SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT (this "Agreement") is entered into to be effective as of 8th day of February, 2013 (the "Effective Date") by and among Highland Capital Management, L.P., a Delaware limited partnership ("HCMLP"), and Highland Capital Management Fund Advisors, L.P., formerly known as Pyxis Capital, L.P., a Delaware limited partnership ("HCMFA"), and any affiliate of HCMFA that becomes a party hereto. Each of the signatories hereto is individually a "Party" and collectively the "Parties".

RECITALS

A. During the Term, HCMLP will provide to HCMFA certain services as more fully described herein and the Parties desire to allocate the costs incurred for such services and assets among them in accordance with the terms and conditions in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I DEFINITIONS

- "Actual Cost" means, with respect to any period hereunder, one hundred percent (100%) of the actual costs and expenses caused by, incurred or otherwise arising from or relating to (i) the Shared Services and (ii) the Shared Assets, in each case during such period.
- "Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.
 - "Agreement" has the meaning set forth in the preamble.
 - "Allocation Percentage" has the meaning set forth in Section 4.01.
- "Applicable Margin" shall mean an additional amount equal to 5% of all costs allocated by Service Provider to the other parties hereto under Article IV; provided that the parties may agree on a different margin percentage as to any item or items to the extent the above margin percentage, together with the allocated cost of such item or service, would not reflect an arm's length value of the particular service or item allocated.
 - "Change" has the meaning set forth in Section 2.02(a).
 - "Change Request" has the meaning set forth in Section 2.02(b).
- "Code" means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

"Effective Date" has the meaning set forth in the preamble.

"Governmental Entity" means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

"Liabilities" means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

"Loss" means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term "Loss" will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

"New Shared Service" has the meaning set forth in Section 2.03.

"Party" or "Parties" has the meaning set forth in the preamble.

"Person" means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

"Quarterly Report" has the meaning set forth in Section 5.01.

"Recipient" means HCMFA and any of HCMFA's direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Shared Services and/or Shared Assets.

"Service Provider" means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Shared Services or Shared Assets.

"Service Standards" has the meaning set forth in Section 6.01.

"Shared Assets" shall have the meaning set forth in Section 3.02.

"Shared Services" shall have the meaning set forth in Section 2.01.

"Subsidiary" means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

"Tax" or "Taxes" means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

"Term" has the meaning set forth in Section 7.01.

ARTICLE II SHARED SERVICES

Section 2.01 <u>Services</u>. During the Term, Service Provider will provide Recipient with Shared Services, including without limitation, all of the (i) finance and accounting services, (ii) human resources services, (iii) marketing services, (iv) legal services, (v) corporate services, (vi) information technology services, and (vii) operations services; each as requested by HCMFA and as described more fully on <u>Annex A</u> attached hereto, the "*Shared Services*"), it being understood that personnel providing Shared Services may be deemed to be employees of HCMFA to the extent necessary for purposes of the Investment Advisers Act of 1940, as amended.

Section 2.02 Changes to the Shared Services.

- (a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider's performance of any Shared Service in order to reflect new procedures, processes or other methods of providing such Shared Service, including modifying the applicable fees for such Shared Service to reflect the then current fair market value of such service (a "Change"). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Shared Service to Recipient.
- (b) The Party requesting a Change will deliver a description of the Change requested (a "Change Request") and no Party receiving a Change Request may unreasonably withhold, condition or delay its consent to the proposed Change.
- (c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Shared Service that do not adversely affect the benefits to Recipient of Service Provider's provision or quality of such Shared Service in any material respect or increase Recipient's cost for such Shared Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Shared Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.
- Section 2.03 New Shared Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Shared Services not otherwise specifically listed in Section 2.01 (a "New Shared Service"). Any agreement between the Parties on the terms for a New Shared Service must be in accordance with the provisions of Article IV and Article V hereof, will be deemed to be an amendment to this Agreement and such New Shared Service will then be a "Shared Service" for all purposes of this Agreement.
- Section 2.04 <u>Subcontractors</u>. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Shared Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III SHARED ASSETS

Section 3.01 <u>Shared IP Rights</u>. Each Service Provider hereby grants to Recipient a non-exclusive right and license to use the intellectual property and other rights granted or licensed, directly or indirectly, to such Service Provider (the "Shared IP Rights") pursuant to third party intellectual property Agreements ("Third Party IP Agreements"), provided that the rights granted to Recipient hereunder are subject to the terms and conditions of the applicable Third Party IP Agreement, and that such rights shall terminate, as applicable, upon the expiration or termination of the applicable Third Party IP Agreement. Recipient shall be licensed to use the Shared IP Rights only for so long as it remains an Affiliate of HCMLP. In consideration of the foregoing licenses, Recipient agrees to take such further reasonable actions as a Service Provider deems to be necessary or desirable to comply with its obligations under the Third Party IP Agreements.

Section 3.02 Other Shared Assets. Subject to Section 3.01, each Service Provider hereby grants Recipient the right, license or permission, as applicable, to use and access the benefits under the agreements, contracts and licenses that such Service Provider will purchase, acquire, become a party or beneficiary to or license on behalf of Recipient (the "Future Shared Assets" and collectively with the Shared IP Rights, the "Shared Assets").

ARTICLE IV COST ALLOCATION

- Section 4.01 <u>Actual Cost Allocation Formula</u>. The Actual Cost of any item relating to any Shared Services or Shared Assets shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "*Allocation Percentage*" means:
- (a) To the extent 100% of such item is demonstrably attributable to HCMFA, 100% of the Actual Cost of such item shall be allocated to HCMFA as agreed by HCMFA;
- (b) To the extent a specific percentage of use of such item can be determined (e.g., 70% for HCMLP and 30% for HCMFA), that specific percentage of the Actual Cost of such item will be allocated to HCMLP or HCMFA, as applicable and as agreed by HCMFA; and
- (c) All other portions of the Actual Cost of any item that cannot be allocated pursuant to clause (a) or (b) above shall be allocated between HCMLP and HCMFA in such proportion as is agreed in good faith between the parties.
- Section 4.02 <u>Non-Cash Cost Allocation</u>. The actual, fully burdened cost of any item relating to any Shared Services or Shared Assets that does not result in a direct, out of pocket cash expense may be allocated to HCMLP and HCMFA for financial statement purposes only, as agreed by HCMFA, without any corresponding cash reimbursement required, in accordance with generally accepted accounting principles, based on the Allocation Percentage principles described in Section 4.01 hereof.

ARTICLE V PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 5.01 Quarterly Statements. Within thirty (30) days following the end of each calendar quarter during the Term (or at such time as may be otherwise agreed by the parties), each Service Provider shall furnish the other Parties hereto with a written statement with respect to the Actual Cost paid by it in respect of Shared Services and Shared Assets provided by it, in each case, during such

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period, setting forth (i) the cost allocation in accordance with Article IV hereof together with the Applicable Margin on such allocated amounts, and (ii) any amounts paid pursuant to Section 5.02 hereof, together with such other data and information necessary to complete the items described in Section 5.03 hereof (hereinafter referred to as the "Quarterly Report").

Section 5.02 <u>Settlement Payments</u>. At any time during the Term, any Party may make payment of the amounts that are allocable to such Party together with the Applicable Margin related thereto, regardless of whether an invoice pursuant to Section 5.03 hereof has been issued with respect to such amounts.

Section 5.03 <u>Determination and Payment of Cost and Revenue Share.</u>

- (a) Within ten (10) days of the submission of the Quarterly Report described in Section 5.02 hereof (or at such other time as may be agreed by the parties), the Parties shall (i) agree on the cost share of each of the Parties and Applicable Margin as calculated pursuant to the provisions of this Agreement; and (ii) prepare and issue invoices for the cost share and Applicable Margin payments that are payable by any of the Parties.
- (b) Within ten (10) days of preparation of the agreement and the issuance of the invoice described in Section 5.03(a) (or at such other time as may be agreed by the parties), the Parties shall promptly make payment of the amounts that are set forth on such cost allocation invoice. Notwithstanding anything in this Agreement to the contrary, provision of the Shared Services shall commence from the Effective Date, but no fees shall be payable from Recipient or otherwise accrue with respect to such services provided during the month of December 2011.

Section 5.04 <u>Taxes</u>.

- (a) Recipient is responsible for and will pay all Taxes applicable to the Shared Services and the Shared Assets provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Shared Services and the Shared Assets as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider's business, but in no event prior to the time it invoices Recipient for the Shared Services and Shared Assets, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.
- (b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider's name. Service Provider's authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any adverse consequences suffered by Recipient as a result of the withdrawal will be submitted to arbitration pursuant to Section 9.14. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider's interests or rights in any of its property. Recipient agrees to

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indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 5.04 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE VI SERVICE PROVIDER RESPONSIBILITIES

Services and the Shared Assets to Recipient on a non-discriminatory basis and will provide the Shared Services and the Shared Assets in the same manner as if it were providing such services and assets on its own account (the "Service Standards"). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 6.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records on behalf of Recipient in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Shared Services and Shared Assets, with respect to Service Provider's performance of its obligations hereunder. This inspection right will include the ability of Recipient's financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider's and its Affiliates' proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient's request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 6.03 <u>Return of Property and Equipment.</u> Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider's control or possession.

ARTICLE VII TERM AND TERMINATION

Section 7.01 <u>Term.</u> The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "*Term*"), unless terminated earlier in accordance with Section 9.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 7.02.

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Section 7.02 <u>Termination</u>. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VIII LIMITED WARRANTY

Section 8.01 <u>Limited Warranty</u>. Service Provider will perform the Shared Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Shared Services and the granting of the Shared Assets under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Shared Services and the Shared Assets for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Shared Service and Shared Asset, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE IX MISCELLANEOUS

Section 9.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or HCMFA or their respective successors or assigns. The Parties understand and agree that, with the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. With the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, no Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Shared Services.

Section 9.02 <u>Amendments; Waivers</u>. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.03 <u>Schedules and Exhibits; Integration.</u> Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 9.04 <u>Further Assurances</u>. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 9.05 <u>Governing Law.</u> This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 <u>Assignment</u>. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 <u>Headings</u>. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 <u>Counterparts</u>. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 <u>Successors and Assigns; No Third Party Beneficiaries</u>. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i)immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P. 300 Crescent Court, Suite 700 Dallas, Texas 75201 Attention: General Counsel

Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P. 300 Crescent Court, Suite 700 Dallas, Texas 75201 Attention: General Counsel

Fax: (972) 628-4147

Section 9.11 <u>Expenses</u>. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

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Section 9.12 <u>Waiver</u>. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.13 <u>Severability</u>. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Arbitration; Jurisdiction. Notwithstanding anything contained in this Agreement or the Annexes hereto to the contrary, in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that either party or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Section 9.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or

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reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

Name: James Dondero Title: President

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

By: Strand Advisors XVI, Inc., its general partner

By: Lon M

Name: Brian Mitts
Title: Assistant Secretary

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Annex A

Shared Services

Compliance

General compliance

Compliance systems

Facilities

Equipment

General Overhead Office Supplies

Rent & Parking

Finance & Accounting

Book keeping

Cash management

Cash forecasting

Credit facility reporting

Financial reporting

Accounts payable

Accounts receivable

Expense reimbursement

Vendor management

HR

Drinks/snacks

Lunches

Recruiting

IT

General support & maintenance (OMS, development, support)

Telecom (cell, phones, broadband)

WSO

Legal

Corporate secretarial services

Document review and preparation

Litigation support

Management of outside counsel

Marketing and PR

Public relations

Tax

Tax audit support

Tax planning

Tax prep and filing

Investments

Investment research on an ad hoc basis as requested by HCMFA

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Valuation Committee

Trading

Trading desk services

Operations

Trade settlement

Rukavina, Davor

From: James Seery <jpseeryjr@gmail.com>
Sent: Thursday, September 17, 2020 4:17 PM

To:DC SauterCc:Gregory V. DemoSubject:Re: Acis Settlement

DC

I believe your concerns regarding the release are misplaced as it does not bind entities that HCMLP does not control. Greg can walk you through the language, but I do not believe it requires adjustment nor does it create any liability. To the contrary, it reduces liability.

With regard to the HCMLP employee prohibitions, no employee whether legal or non-legal can work on any matter that is inimical to the interests of HCMLP. I as CEO, and the Independent Board will make the determination as to whether an action violates the prohibition, and a breach of the prohibition will lead to termination for cause. I believe that most of the employees have been informed of this requirement and are following the directive.

With regard to transactional matters, HCMLP employees will continue to work with you on those issues that do not run afoul of the prohibition above. If there is a particular matter where you are taking a potentially adversarial action vis a vis HCMLP, please let me know what it is. We can then consider whether a customized operating protocol for that issue is needed or whether you will simply be on your own. I will make the determination with the advice of counsel. We do not believe the Texas rules of professional responsibility apply in this situation.

Please let me know what matter you are considering with respect to the immediately preceding paragraph, and we will consider how to best address your concerns.

Best. Jim

Jim Seery 631-804-2049 jpseeryjr@gmail.com

From: DC Sauter < DSauter@NexPointadvisors.com > Date: Thursday, September 17, 2020 at 4:56 PM

To: Jim Seery <jpseeryjr@gmail.com>
Cc: Greg Demo <GDemo@pszjlaw.com>

Subject: RE: Acis Settlement

Jim/Greg, follow up on my email below. I have a few items that have been placed on my plate, and I really need to understand who I can speak with and the extent to which they are permitted to share information with me.

D.C. SAUTER





O: 972.628.4117 | C: 469.877.6440

From: DC Sauter

Sent: Tuesday, September 15, 2020 8:55 AM **To:** 'James Seery' <jpseeryjr@gmail.com> **Cc:** Gregory V. Demo <GDemo@pszjlaw.com>

Subject: RE: Acis Settlement

My apologies for copying Isaac. I was under the mistaken impression that he would have assisted in the settlement.

In my view, the requested clarification is beneficial to Strand, HCMLP, and the other "HCMLP Entities." The documents purport to release ACIS from claims on behalf of, among others, any entity that is "managed" by HCMLP and "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns" of any "HCMLP Entity." Those "HCMLP Entities" lack the authority to bind a whole host of parties in that laundry list, which could result in claims against HCMLP, Strand, and the other "HCMLP Entities" by both the "ACIS Released Parties," who will claim they didn't receive the benefit of the bargain, and the parties on whose behalf the "HCMLP Parties" purported to release claims who didn't consent to the release.

Additionally, I'd like to visit with you all regarding the board's position that prohibits certain HCMLP personnel from working on certain matters.

First, I am unclear whether the prohibition applies to only HCMLP legal personnel or whether it applies to all HCMLP employees. Please clarify.

Second, as you may know, virtually all of these matters are falling into my lap, and in most cases I lack any knowledge about them. It would help me tremendously if current HCMLP employees, and particularly the legal personnel, could provide me with transactional background to assist in the transition of the matter. While I understand the board's concern with Judge Jernigan's order, I don't believe that the Texas Disciplinary Rules of Professional Conduct mandate or even permit an attorney licensed in the State of Texas to refuse to cooperate with a former client in the transfer of a matter to a new attorney. Rule 1.15(d) states that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned." The comments to that rule provide additional clarity: "In every instance of withdrawal and even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client." T.D.R.P.C. Rule 1.15, comment 9. Proper steps may include providing information to new counsel or even continuing to represent the client for a limited time to meet impending deadlines. Microsoft Corp. v. Commonwealth Sci. & Indus. Research Org., 2007 U.S. Dist. LEXIS 91550 *23-24 fn. 11 (E.D. Tex. Dec. 13, 2007). Even if the board insists that the HCMLP legal personnel cannot continue to represent others in non-HCMLP matters or matters adverse to HCMLP (irrespective of any conflict of interest analysis of whether those attorneys may continue to represent HCMLP in those matters), the ethical rules require that the attorneys provide assistance in transferring those matters to me or others.

Finally, I routinely handle, and am routinely asked to handle, legal matters that relate to real estate for entities owned or controlled by HCMLP (Park West, the Arizona assets, the Maple Ave. property, to name a few). I am not an HCMLP employee, and it's my understanding that NexPoint Advisors, L.P. is not compensated for the time I spend on HCMLP matters. I'm not suggesting that this arrangement should change, but it feels from my perspective that the board's position is only working in one direction. In other words, if I understand the board's position correctly, I can work on both NexPoint and HCMLP matters, but the HCMLP legal employees may only work on HCMLP-related matters. It has also put a significant amount of additional work on my plate. I would like to understand two things. First, what is the scope of my authority in these matters, and what is the proper protocol vis-à-vis you, DSI, and the board? I have tried to take the conservative approach in keeping you all informed and asking for consent or approval where I thoughts it

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appropriate. I assume this is how you'd like to continue to handle things, but I would like confirmation of that. Second, I have heard that you all were working to transfer a couple of the legal personnel (perhaps Thedford and Post) to HCMFA so they could assist with the work load (particularly in the areas where I don't have a significant amount of experience). I'd like to know where that stands and when relief can be expected.

I'm available most of today and tomorrow to discuss.

D.C. SAUTER

NEXPOINT

O: 972.628.4117 | C: 469.877.6440

From: James Seery < <u>ipseeryjr@gmail.com</u>>
Sent: Tuesday, September 15, 2020 7:01 AM
To: DC Sauter < <u>DSauter@NexPointadvisors.com</u>>

Cc: Gregory V. Demo < GDemo@pszjlaw.com >; Isaac Leventon < ILeventon@HighlandCapital.com >

Subject: Re: Acis Settlement

DC. We will discuss and revert to you. Neither Isaac nor anyone else at HCMLP is permitted to work on any issues related to the settlement and release other than as directed by me.

Thanks

Sent from my iPad

On Sep 14, 2020, at 7:08 PM, DC Sauter < <u>DSauter@nexpointadvisors.com</u>> wrote:

Greg,

I've been asked to review the attached release on behalf of HCMFA and the closed-end funds. I'm concerned that the language below creates an ambiguity as to whether the closed-end funds and HCMFA have released claims against the ACIS parties:

- 1. The release by Strand, which also serves as the general partner of HCMFA; and
- The release by each "HCMLP Entity" of its "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns."

We would like the final sentence in paragraph 1.a. of the Release to be revised to specifically identify HCMFA and the closed-end funds as parties not covered by the release. Please let me know if you'd like to discuss in more detail.

D.C. SAUTER | GENERAL COUNSEL, REAL ESTATE

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201 O: 972.628.4117 | C: 469.877.6440 | F: 972.628.4147 dsauter@nexpointadvisors.com | www.NexPointGroup.com Case 21-03005-sgj Doc 134-4 Filed 12/18/21 Entered 12/18/21 02:10:25 Page 207 of 474

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PRIVILEGE WARNING: The sender or recipient of this message is a member of the legal department at Highland Capital Management. This message and any attachments hereto may constitute attorney work product or be protected by the attorney-client privilege. Do not disclose this message or any attachments hereto without prior consent of a member of the legal department at Highland Capital Management.

<Acis - Release (EXECUTION VERSION).pdf>

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CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

In re:	§ § Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L	8
Debtor.	\$ \$
HIGHLAND CAPITAL MANAGEMENT, L	P., §
Plaintiff,	§ Adversary Proceeding No.
VS.	§ No. 20-03190-sgj §
JAMES D. DONDERO, Defendant.	\$ \$
Detellualit.	

ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST JAMES DONDERO

This matter having come before the Court on Plaintiff Highland Capital Management,

193405421011 **EXHIBIT 3**

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the "Motion"), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the Motion, (b) Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief [Adv. Pro. Docket No. 1] (the "Complaint"), (c) the arguments and law cited in the Debtor's Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 3] (the "Memorandum of Law," and together with the Motion and Complaint, the "Debtor's Papers"), (d) James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction [Adv. Pro. Docket No. 52] (the "Opposition") filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the "Hearing"), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero [Adv. Pro. Docket No. 6] (the "TRO Hearing"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest;

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and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

- 1. The Motion is **GRANTED** as set forth herein.
- 2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

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alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "<u>Prohibited Conduct</u>").²

- 3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.
- 4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.
- 5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.
- 6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.
- 7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor's case becomes effective, unless otherwise ordered by the Court.

² For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the "<u>UCC</u>") and its professionals regarding a pot plan.

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- 8. All objections to the Motion are overruled in their entirety.
- 9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Acknowledgement from HCMLP

April 15, 2019

Reference is hereby made to certain outstanding amounts loaned from HIGHLAND CAPITAL MANAGEMENT, L.P. ("HCMLP") to HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. ("HCMF") for funding of HCMF's ongoing operations, which are payable on demand and remained outstanding on December 31, 2018 and as of the date hereof.

HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021.

HCMLP hereby agrees to not demand payment on amounts owed by HCMF prior to May 31, 2021.

Highland Capital Management, L.P.

By: Strand Advisors, Inc., its general partner

By:

Acknowledged By:

Highland Capital Management Fund Advisors, L.P. By: Strand XVI, Inc., its general partner

By:

EXHIBIT 4

EXHIBIT 182



DATE: May 28, 2019

TO: The Board of Trustees (the "Board") of Highland Global Allocation Fund (the "Fund")

FROM: Highland Capital Management Fund Advisors, L.P. ("HCMFA" or the "Adviser")

RE: Resolution of the Fund's Net Asset Value ("NAV") Error

This memorandum summarizes the final resolution of the Fund's NAV error related to its TerreStar Corporation ("TerreStar") equity holding. In connection with the Fund's conversion from an open-end fund to a closed-end fund (the "Conversion") on February 13, 2019, the Office of the Chief Accountant ("OCA") of the SEC reviewed the Adviser's fair valuation of TerreStar equity, in particular the application of Financial Accounting Standards Board Accounting Standards Update 2011-4, Topic 820, Fair Value Measurement ("ASC 820") to two transactions in TerreStar equity that occurred in March 2018 (the "March Transactions"). The OCA provided its feedback during an exit call on February 8, 2019 and subsequently confirmed no comments to the Adviser's confirmation of understanding letter on February 14, 2019.

The Adviser and Houlihan Lokey, an independent third party expert valuation consultant approved by the Board, initially determined that the March Transactions were "non-orderly" and should be given "zero weighting" for purposes of determining fair value. As reflected in the consultation, the Adviser ultimately determined that both March Transactions should be classified as "orderly." The fair valuation methodology adopted, as addressed in the consultation, weights inputs and does not reflect last sales transaction pricing exclusively in determining fair value. The "orderly" determination and adoption of the weighted fair valuation methodology resulted in NAV errors in the Fund (the "NAV Error").

After incorporation of the updated valuation into the Fund's NAV, the gross NAV Error, excluding interest, the advisory fee rebate, and processing costs, amounted to approximately \$6.1 million of loss to the Fund and approximately \$1.4 million of losses to Shareholders (a total loss of approximately \$7.5 million) over the period between March 18, 2018 and January 19, 2019 (the "NAV Restatement Period").

The Fund was made whole through a \$5,186,496 payment on February 15, 2019, and a \$2,398,842 payment on May 2, 2019. A detailed breakdown of the NAV Error and the make whole payments is set forth below. Shareholder reprocessing and reimbursement are in progress with the Fund's prior transfer agent, DST Systems, Inc. (as transfer agent to the open-end fund), and given detailed omnibus account information has not yet been obtained the estimated make whole payments are subject to change. A representative of the Adviser will provide the Board with an update on the process during the May 28, 2019 Board meeting.

NAV Error Breakdown and Make Whole Payments

			Estimated Loss	
	Transaction Date(s)	Loss to Fund	to Shareholders3	Totals
Estimated Net Loss	3/14/18 thru 1/7/19	(6,068,851)	(1,373,272)	(7,442,123)
Processing, Fees, Interest	3/14/18 thru 1/7/19	(375,000)	-	(375,000)
Insurance Proceeds	2/15/2019	3,566,248	1,373,272	4,939,520
Insurance deductible paid by Adviser	2/15/2019	246,976	-	246,976
Management fee offset	4/1/2019	47,000	-	47,000
Additional payment from Adviser	5/2/2019	$2,339,627^2$	-	2,339,627
Reimbursement of Processing costs from Adviser	- ¹	244,000	-	244,000
Total		-	-	-

Suppl	lemen	<u>ıtal N</u>	<u>lume</u>	rical	U	<u>pdat</u>	<u>e</u>
Addit	ional	estim	ated 1	loss 1	to f	und	an

Additional estimated loss to fund and shareholders	1/8/19 thru 1/28/19 5	(19,789)
Additional processing, management fees, and interest	Note 4	(39,426)
Additional payment from Adviser	5/2/2019	59,215

Total additional payment from Adviser ⁶

5/2/2019 2,398,842

- 1 Expected to be incurred thru 12/31/19, and will be reimbursed by Adviser as incurred. To date no invoices have been billed or paid, but upon receipt of a future invoice, the Adviser will promptly pay.
- 2 Includes \$2,255,628 of previously outstanding balance, and \$84,000 of interest calculated through 1/7/19, which was the "as of date" used for the calculations in the OCA submission.
- 3 Represents the estimated losses to shareholder subscribing into the fund during the NAV Restatement Period and estimated losses to be determined after reprocessing individual capital activity that was held in Omnibus accounts.
- 4 Proposal from service provider was higher than original estimate, and includes interest thru date of final payment made by Adviser.
- 5 This includes the calculations subsequent to 1/7/19 (which was the "as of date" used for the calculations in the OCA submission)
- "through date" 1/28/19, which the final date in which the revised mark was fully reflected in the NAV.
- 6 Includes \$2,339,627 and \$59,215 of Additional payments from Adviser

INTENTIONALLY OMITTED

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
Clay M. Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile

ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

In re:	§	Case No. 19-34054
HIGHLAND CAPITAL MANAGEMENT, I	L.P. §	Chapter 11
Debtor.	§ §	
HIGHLAND CAPITAL MANAGEMENT, I	§ [.P. 8	
,	§ §	
Plaintiff.	§	Adversary No. 21 02002
v.	8 8	Adversary No. 21-03003
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

DEFENDANT JAMES DONDERO'S RULE 26 INITIAL DISCLOSURES

TO: Plaintiff Highland Capital Management, L.P., by and through its attorneys of record, John Morris, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067.

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, made applicable to this proceeding through Rule 7026 of the Federal Rules of Bankruptcy Procedure, Defendant James

Dondero ("<u>Dondero</u>" or "<u>Defendant</u>") makes the following initial disclosures to Plaintiff Highland Capital Management, L.P. ("Plaintiff" or "Debtor"). 1

1. The names, and, if known, the addresses, and telephone numbers of individuals likely to have discoverable information, along with the subjects of that information are listed below. Defendant reserves the right to amend and/or supplement these disclosures.

ANSWER:

James D. Dondero

c/o D. Michael Lynn
Clay M. Taylor
Bryan C. Assink
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
Attorneys for Defendant

Dondero may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the terms of the promissory notes, the drafting and execution of the notes, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the purpose and intent of the notes, the Debtor's prior use of forgivable loans, and Dondero's compensation from the Debtor during his employment.

Highland Capital Management, L.P. and certain of its current employees

c/o John Morris PACHULSKI STANG ZIEHL & JONES LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 Attorneys for Plaintiff

Debtor and certain of its current employees, including potentially Thomas Surgent, David Klos, and Kristen Hendrix, may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and Dondero's defenses to the allegations in the complaint, including the circumstances surrounding the execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions

¹ Defendant makes these disclosures subject in all respects to his Motion for Withdrawal of the Reference [Adv. Dkt. No. 21] and the Motion to Stay Pending the Motion to Withdraw the Reference of Plaintiff's Complaint [Adv. Dkt. No. 22] filed on April 15, 2021. Defendant does not waive, but instead hereby preserves, his right to a jury trial and all rights and requests for relief asserted in the motions. Defendant does not consent to the Bankruptcy Court determining this proceeding or entering final orders or judgments in this proceeding. Instead, Defendant requests that the reference be withdrawn and that the District Court adjudicate this proceeding.

subsequent, the Debtor's prior use of forgivable loans, and Dondero's compensation from the Debtor during his employment.

Brian Collins, former employee of the Debtor

Tel: 213-550-4538

As a former employee, he may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Amy Theriot, former employee of the Debtor

Tel: 214-893-5352

As a former employee, she may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Mark Okada, former employee of the Debtor

Tel: 975-989-1000

As a former employee, he may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Scott Ellington, former employee of the Debtor

c/o Frances Smith Ross & Smith PC 700 N. Pearl Street, Suite 1610 Dallas, TX 75201

As a former employee, he may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution

of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Frank Waterhouse, former employee of the Debtor

c/o Frances Smith Ross & Smith PC 700 N. Pearl Street, Suite 1610 Dallas, TX 75201

As a former employee, he may have knowledge regarding the promissory notes, the circumstances surrounding the execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

John Honis, employee of Rand Advisors

Tel: 214-335-7969

As an employee of Rand Advisors, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Jack Yang, former employee of the Debtor

Tel: 646-387-2351

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Paul Adkins, former employee of the Debtor

Tel: +65 9728 0599

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Pat Daugherty, former employee of the Debtor

c/o Jason Kathman Spencer Fane LLP 2200 Ross Avenue, Suite 4800 Dallas, TX 75201

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Tim Lawler, former employee of the Debtor

Tel: 847-305-3013

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable

loans.

Appu Mundassery, former employee of the Debtor

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable

loans.

Mike Hurley, former employee of the Debtor

Tel: 775-750-8921

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable

loans.

Gibran Mahmud, former employee of the Debtor

Tel: 972-740-0018

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable

loans.

2. A copy or a description by category and location, of all documents, electronically stored

information, and tangible things that the disclosing party has in its possession, custody, or control

and may use to support its claims or defenses.

ANSWER: Defendant may have documents and communications related to the following

matters in his possession, custody, or control that he may use to support his claims or

defenses. The inclusion of a general category of documents below does not mean that specific

documents necessarily exist or that Defendant has such documents in his possession, custody,

or control.

- 1. Documents and communications related to the allegations in the complaint and Dondero's defenses to the allegations in the complaint, including, without limitation, documents related to the terms of the promissory notes, the drafting and execution of the notes, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the purpose and intent of the notes, the Debtor's prior use of forgivable loans, and Dondero's compensation from the Debtor during his employment.
- 2. Documents related to Dondero's personal tax returns.
- 3. Documents related to tax loan(s) made by the Debtor to Dondero and such tax amounts incurred related to federal partnership tax.
- Documents and/or communications related to Dondero's compensation during his employment at Highland.
- 5. Any and all pleadings filed in this matter and the main bankruptcy case.
- 3. A computation of each category of damages claimed by the disclosing party, who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.

ANSWER:

Defendant is not seeking actual damages at this time.

4. For inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

ANSWER:

No such insurance agreements known.

Reservation of Rights

Defendant makes these disclosures subject in all respects to his Motion for Withdrawal of the Reference [Adv. Dkt. No. 21] and Motion to Stay Pending the Motion to Withdraw the Reference of Plaintiff's Complaint [Adv. Dkt. No. 22] filed on April 15, 2021. Defendant does not waive, but hereby preserves, his right to a jury trial and all additional rights and relief available as asserted in the motions.

The Defendant's investigation is ongoing, and he reserves the right to further amend, modify and/or supplement these initial disclosures as provided in Federal Rule of Civil Procedure 26(e) if warranted and to the extent additional disclosures are not mooted or made redundant by information made known during the discovery process or in writing. In addition, the Defendant makes these initial disclosures without waiving but expressly preserving: (a) his right to a jury trial; (b) his right to have this proceeding determined by the District Court; (c) his right to object to the entry of any final orders or final judgments by the Bankruptcy Court in this proceeding; (d) the right to object to any discovery requests or to the admissibility of evidence on the grounds of privilege, work product, relevance, materiality, or any other proper ground; and (e) the right to object to the use of any information provided in or derived from these initial disclosures for any purpose in this action.

Dated: April 15, 2021 Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn

State Bar I.D. No. 12736500

John Y. Bonds, III

State Bar I.D. No. 02589100

Clay M. Taylor

State Bar I.D. No. 24033261

Bryan C. Assink

State Bar I.D. No. 24089009

BONDS ELLIS EPPICH SCHAFER JONES LLP

420 Throckmorton Street, Suite 1000

Fort Worth, Texas 76102

(817) 405-6900 telephone

(817) 405-6902 facsimile

Email: michael.lynn@bondsellis.com

Email: john@bondsellis.com

Email: clay.taylor@bondsellis.com

Email: bryan.assink@bondsellis.com

ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on April 15, 2021, a true and correct copy of the foregoing Rule 26 initial disclosure was served via email on counsel for the Plaintiff as listed below.

Jeff Pomerantz
Ira Kharasch
John Morris
Greg Demo
Hayley Winograd
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

/s/ Bryan C. Assink

Bryan C. Assink

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PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717) (admitted pro hac vice) Ira D. Kharasch (CA Bar No. 109084) (admitted pro hac vice) John A. Morris (NY Bar No. 2405397) (admitted pro hac vice) Gregory V. Demo (NY Bar No. 5371992) (admitted pro hac vice) Hayley R. Winograd (NY Bar No. 5612569) (admitted pro hac vice) 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067

Telephone: (310) 277-6910 Facsimile: (310) 201-0760

HAYWARD PLLC

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231

Tel: (972) 755-7100 Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

	_	
In re:	§ §	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§ §	Case No. 19-34054-sgj11
Reorganized Debtor.	§ §	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§ § 8	Adversary Proceeding No
VS.	8 §	21-03004-sgj
	§	
HIGHLAND CAPITAL MANAGEMENT FUND	§	
ADVISORS, L.P.,	§	
Defendant.	§ §	

1934054211130000000000013 **Appx. 02992**

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Cresce.

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PLAINTIFF'S THIRD AMENDED NOTICE OF RULE 30(B)(6) DEPOSITION TO HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable herein pursuant to Rules 7030 and 9014 of the Federal Rules of Bankruptcy Procedure, Highland Capital Management, L.P., the plaintiff in the above-referenced adversary proceeding in the above-captioned chapter 11 case, shall take the deposition of Highland Capital Management Fund Advisors, L.P. ("HCMFA") by the person(s) most qualified to testify on HCMFA's behalf with respect to the topics described in Exhibit A attached hereto on December 1, 2021, commencing at 10:00 a.m. Central Time or at such other day and time as the Plaintiff may agree in writing. The deposition will be taken under oath before a notary public or other person authorized by law to administer oaths and will be visually recorded by video or otherwise.

The deposition will be taken remotely via an online platform due to the coronavirus pandemic such that no one will need to be in the same location as anyone else in order to participate in the deposition and by use of Interactive Realtime.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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Dated: November 30, 2021. PACHULSKI STANG ZIEHL & JONES LLP

/s/ John A. Morris

Jeffrey N. Pomerantz (CA Bar No.143717) Ira D. Kharasch (CA Bar No. 109084) John A. Morris (NY Bar No. 2405397) Gregory V. Demo (NY Bar No. 5371992) 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067

Telephone: (310) 277-6910 Facsimile: (310) 201-0760

E-mail: jpomerantz@pszjlaw.com

ikharasch@pszjlaw.com jmorris@pszjlaw.com gdemo@pszjlaw.com

-and-

HAYWARD PLLC

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
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ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231

Tel: (972) 755-7100 Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

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EXHIBIT A

DEFINITIONS

- 1. "<u>Amended Answer</u>" means *Defendant's Amended Answer* lodged in the above-referenced adversary proceeding at Docket No. 48.
- 2. "Bankruptcy Case" refers to the above-referenced bankruptcy case styled as *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11.
- 3. "<u>Communications</u>" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, text messages, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.
- 4. "<u>Concerning</u>" means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.
- 5. "Discovery Requests" means (i) the Debtor's First Requests for Admission Directed to Highland Capital Management Fund Advisors, L.P., (ii) the Debtor's First Request for Production of Documents Directed to Highland Capital Management Fund Advisors, L.P., and (iii) the Debtor's First Interrogatories Directed to Highland Capital Management Fund Advisors, L.P.
- 6. "<u>Document</u>" means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whoever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, "writings" as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or

intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

- 7. "Exhibits" refers to each of the documents identified as Exhibits 28-66 on *Debtor's Amended Witness and Exhibit List with Respect to Hearing to Be Held on May 25, 2021* lodged in the above-referenced adversary proceeding at Docket No. 35.
- 8. "HGAF" shall have the meaning ascribed to that term in paragraph 38 of the Amended Answer.
 - 9. "Highland" means Highland Capital Management, L.P.
- 10. "<u>Insurance Claim</u>" means any claim that You filed for insurance coverage Concerning the NAV Error.
- 11. "Motion to Amend" means Defendant's Motion for Leave to Amend Answer lodged in the above-referenced adversary proceeding at Docket No. 32.
- 12. "NAV Error" means the error made in calculating the net asset value of the equity interests HGAF held in TerreStar that were sold in March 2018.
- 13. "Notes" shall have the meaning ascribed to that term in paragraph 15 of the Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate lodged in the above-referenced adversary proceeding at Docket No. 1.
- 14. "Original Answer" means *Defendant's Original Answer* lodged in the above-referenced adversary proceeding at Docket No. 6.
- 15. "<u>Retail Board</u>" means any board of trustees or directors of any fund to which You provide advisory services.
- 16. "Sauter Declaration" means the *Declaration of Dennis C. Sauter, Jr.* lodged in the above-referenced adversary proceeding at Docket No. 32-1.

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17. "You" or "Your" means Highland Capital Management Fund Advisors,

L.P., and anyone authorized to act on its behalf.

Rule 30(b)6) Topics

Topic No. 1:

Your Original Answer.

Topic No. 2:

Your Amended Answer

Topic No. 3:

Each Affirmative Defense asserted in Your Amended Answer, including but not limited to all facts and circumstances, Communications, and Documents Concerning each Affirmative Defense. *See* Answer ¶¶ 38-47.

Topic No. 4:

The Notes, including but not limited to (a) the negotiation of the Notes, (b) the terms of the Notes, (c) Communications Concerning the Notes, (d) any payments of principal or interest made by You or on Your behalf with respect to the Notes, (e) the use of the proceeds of the Notes, (f) Your communications with Your outside auditors Concerning the Notes and the obligations thereunder, and (g) any agreements Concerning the Notes.

Topic No. 5:

The Exhibits.

Topic No. 6:

The Motion to Amend.

Topic No. 7:

The Sauter Declaration.

Topic No. 8:

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Any Insurance Claim that You filed, including but not limited to: (a) any proceeds You received on account of any Insurance Claim; (b) any deductible paid by You in connection with any Insurance Claim; (c) the date You received any insurance proceeds on account of any Insurance Claim; (d) the use of the proceeds from any Insurance Claim; and (e) any Communications with any insurance carrier that processed any Insurance Claim.

Topic No. 9:

Any "consent fee" paid by You in April or May 2019, including the amount, date of payment, and source of funding for any such "consent fee."

Topic No. 10:

Your accounting for (a) the \$2.4 million transferred from Highland to You on May 2, 2019, and (b) the \$5 million transferred from Highland to You on May 3, 2019.

Topic No. 11:

Communications in 2020 with any Retail Board concerning any amounts due and owing by You to Highland, including but not limited to the disclosures You made to any Retail Board in October 2020.

Topic No. 12:

All Communications that You made in the Bankruptcy Case Concerning the Notes, including in any pleading, court filing, or argument.

Topic No. 13:

The identity (including the title or position) of each of Your officer(s), director(s), direct and indirect owner(s), and employee(s) for the period January 1, 2018 through the present.

Topic No. 14:

Your responses to the Discovery Requests.

INTENTIONALLY OMITTED

INTENTIONALLY OMITTED

Case 21-03003-sgj Doc 11-1 Filed 03/30/21 Entered 03/30/21 11:24:52 Page 2 of 2

From: David Klos < DKlos@HighlandCapital.com>

Sent: Friday, February 02, 2018 2:16 PM

To: Corporate Accounting
Cc: Melissa Schroth
Subject: \$3.825mm to Jim

Blair,

Please set up \$3.825mm to go to Jim this afternoon. Frank has approved.

Drew, this is a new loan.

DAVID KLOS | CONTROLLER



300 Crescent Court | Suite 700 | Dallas, Texas 75201 C: 214.674.2926 | O: 972.419.4478 | F: 972.628.4147 dklos@highlandcapital.com | www.highlandcapital.com

Case 21-03003-sgj Doc 11-2 Filed 03/30/21 Entered 03/30/21 11:24:52 Page 2 of 2

From: wiremail@bbvacompass.com < wiremail@bbvacompass.com >

Sent: Friday, February 2, 2018 1:35 PM

To: Corporate Accounting < Corporate Accounting @hcmlp.com>

Subject: Compass Bank [Texas Bank Outgoing] Message ID:180202133456H400 Advice Code:TxBkOut

Compass Bank Wire Transfer Dept.

701 S 32nd Street

Birmingham, AL 35233

Outgoing Wire - Advice of Debit

Date: 2018-02-02 00:00:00 Wire Create Time 13:34:57

Account #

Account Name : HIGHLAND CAPITAL MANAGEMENT LP

Amount : \$3,825,000.00

GFX Reference : 180202133456H400

Receiving Bank: 311973208

Recv BK Name : NEXBANK SSB

Originator : HIGHLAND CAPITAL MANAGEMENT LP

Beneficiary : <u>James</u> Dondero

Bene Acct # : 884

Beneficiary Info (OBI):

2/2/2018 Loan

Reference for Beneficiary (RFB):

FED Reference Number (IMAD): 20180202F2QCZ60C002532

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Case 21-03003-sgj Doc 11-4 Filed 03/30/21 Entered 03/30/21 11:24:52 Page 2 of 2

From: Blair Hillis <BHillis@HighlandCapital.com>
Sent: Wednesday, August 01, 2018 1:12 PM
To: David Klos; Corporate Accounting

Cc: Melissa Schroth

Subject: RE: \$2.5mm loan to Dondero

Funds have been transferred to Jim's account. Thanks!

Kind Regards, Blair Roeber

From: David Klos

Sent: Wednesday, August 1, 2018 10:47 AM

To: Corporate Accounting **Cc:** Melissa Schroth

Subject: \$2.5mm loan to Dondero

Jim has authorized a \$2.5mm loan from HCMLP to Dondero.

Blair, can you please set up this wire today? Drew, can you please draw up loan docs for execution?

DAVID KLOS | CONTROLLER



300 Crescent Court | Suite 700 | Dallas, Texas 75201 C: 214.674.2926 | O: 972.419.4478 | F: 972.628.4147 dklos@highlandcapital.com | www.highlandcapital.com

From: Aigen, Michael P. [mailto:michael.aigen@stinson.com]

Sent: Friday, October 15, 2021 1:23 PM **To:** John A. Morris jmorris@pszjlaw.com

Cc: Jeff Pomerantz < jpomerantz@pszjlaw.com >; Gregory V. Demo < GDemo@pszjlaw.com >; Hayley R. Winograd < hwinograd@pszjlaw.com >; 'zannable@haywardfirm.com' < zannable@haywardfirm.com >; Rukavina, Davor (drukavina@munsch.com) < drukavina@munsch.com >; Deitsch-Perez, Deborah R. < deborah.deitschperez@stinson.com >; 'ddraper@hellerdraper.com >; Vasek, Julian (jvasek@munsch.com) < jvasek@munsch.com >; Berghman, Thomas (tberghman@munsch.com) < tberghman@munsch.com >; Clay Taylor (clay.taylor@bondsellis.com) < clay.taylor@bondsellis.com >; Bryan Assink (bryan.assink@bondsellis.com) < bryan.assink@bondsellis.com >; Douglas Draper < ddraper@hellerdraper.com >; elmsd@gtlaw.com

Subject: RE: HCMLP's Objections to Defendants' Rule 30(b)(6) Notice

John:

Defendants have the following objections to your corporate representative topics:

NexPoint, HCMS and HCRE

Topic 1: Your answer.

Defendants object to this topic because it is vague and not specific enough to allow Defendants to adequately prepare a witness. Subject to these objections, Defendants will provide a witness on this topic.

Topic 2: Each Affirmative Defense asserted in Your Answer, including but not limited to all facts and circumstances, Communications, and Documents Concerning each Affirmative Defense.

Defendants object to this topic because it is vague and not specific enough to allow Defendants to adequately prepare a witness. Subject to these objections, Defendants will provide a witness on this topic.

Topic 3: The Note, including but not limited to (a) the negotiation of the Note, (b) the terms of the Note, (c) Communications Concerning the Note, (d) any payments of principal or interest made by You or on Your behalf with respect to the Note; (e) the use of the proceeds of the Note, (f) Your communications with Your outside auditors Concerning the Note and the obligations thereunder, and (g) all agreements Concerning the Note.

Defendants object to the portion of this topic seeking information related to the use of the proceeds of the Note because that information is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Defendants will provide a witness on this topic.

Topic 4: Your responses to the Discovery Requests.

Defendants object to this topic because it is vague and not specific enough to allow Defendants to adequately prepare a witness. Defendants incorporate all objections made in their discovery responses. Subject to these objections, Defendants will provide a witness on this topic.

Dugaboy

Topic 2: Your authority to enter into the Alleged Agreement.

Defendant objects to this topic to the extent that it seeks privileged information and seeks legal conclusions. Subject to these objections, Defendant will provide a witness on this topic.

Topic 3: Ownership, beneficial ownership, and control of The Dugaboy Investment Trust.

Defendant objects to this topic because that information is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Defendant will provide a witness on this topic.

Topics 4-8: Other agreements other than the agreements at issue in these proceedings.

Defendant object to these topics because that information is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Defendant will provide a witness on these topics.

Topic 9: Your responses to the Discovery Requests.

Defendant objects to this topic because it is vague and not specific enough to allow Defendant to adequately prepare a witness. Defendant incorporates all objections made in its discovery responses. Subject to these objections, Defendant will provide a witness on this topic.

Michael P. Aigen

Partner

STINSON LLP

3102 Oak Lawn Avenue, Suite 777 Dallas, TX 75219 Direct: 214.560.2201 \ Bio

STINSON.COM

From: John A. Morris < jmorris@pszjlaw.com> Sent: Tuesday, October 12, 2021 5:50 PM

To: Aigen, Michael P. <michael.aigen@stinson.com>

Cc: Jeff Pomerantz < jpomerantz@pszjlaw.com >; Gregory V. Demo < GDemo@pszjlaw.com >; Hayley R. Winograd <hwinograd@pszjlaw.com>; 'zannable@haywardfirm.com' <zannable@haywardfirm.com>; Rukavina, Davor (drukavina@munsch.com) < drukavina@munsch.com>; Deitsch-Perez, Deborah R. < deborah.deitschperez@stinson.com>; 'ddraper@hellerdraper.com' <ddraper@hellerdraper.com>; Vasek, Julian (jvasek@munsch.com) <jvasek@munsch.com>; Berghman, Thomas (tberghman@munsch.com) <tberghman@munsch.com>; Clay Taylor (clay.taylor@bondsellis.com) <clay.taylor@bondsellis.com>; Bryan Assink (bryan.assink@bondsellis.com)
bryan.assink@bondsellis.com> Subject: HCMLP's Objections to Defendants' Rule 30(b)(6) Notice

Michael:

HCMLP has the following objections to the attached Rule 30(b)(6) notice:

HCMLP objects to Topic No. 2 (a) to the extent it calls for HCMLP to tender a witness to testify with precision to all principal, interest, and fees due under each Note that is the subject of the Complaints, and on the grounds that (b) HCMLP provided calculations of damages in its demand and default letters as well as its Complaints, (c) the categories of damages are all (i) unpaid principal, (ii) accrued but unpaid interest, and (iii) costs of collection, including reasonable attorneys' fees (the "Damages"), (d) based on the Notes and the documents produced proving HCMLP's costs of collection (which will be

supplemented from time to time to account for additional costs), the Defendants are just as easily capable of calculating the Damages at any moment in time as HCMLP, (e) it is unreasonable to expect any witness to specifically recall the precise Damages due under each Note, particularly when such Damages continue to increase every day.

Subject to those objections, HCMLP will tender a witness prepared to testify on Topic No. 2.

<u>HCMLP objects to Topic No. 4</u> on the grounds that (a) the phrase "involved in" is vague and ambiguous, and (b) it assumes that any of the Notes were subject to "negotiations."

Subject to those objections, HCMLP will tender a witness prepared to testify as to the identify of individuals it knows were involved in communications related to the execution and/or terms of the notes.

<u>HCMLP objects to Topic No. 7</u> on the grounds that (a) it seeks "facts" that are solely within the Defendants' knowledge, and that (b) Defendants' defenses and affirmative defenses have materially changed over time, and are otherwise ambiguous or not specifically set forth in the Answers.

Subject to that objection, HCMLP will tender a witness prepared to testify as to facts that it knows of that relate to or concern the defenses and affirmative defenses specifically proffered by any of the Defendants.

<u>HCMLP objects to Topics No. 9</u> on the grounds that (a) there is no time limitation, (b) the existence and terms of all affiliate loans, including all issues concerning forgiveness and forbearance, are set forth in detail in each of HCMLP's audited financial statements for each year from 2008 through 2018 (including the sections concerning "Subsequent Events"), and HCMLP specifically refers Defendants to those audited financial statements, and (c) it is unreasonable to expect any witness to specifically recall the identity of all affiliated borrowers, and the amounts, dates, and terms of all loans made to affiliated borrowers, including whether, when, and to what extent any such affiliated loans were forgiven.

Subject to those objections, HCMLP will tender a witness prepared to testify as to loans it made to employees or officers that were forgiven, in whole or in part, during the period 2008 through the Petition Date.

HCMLP objects to Topics No. 10 on the grounds that (a) there is no time limitation, (b) the existence and terms of all affiliate loans, including all issues concerning forgiveness and forbearance, are set forth in detail in each of HCMLP's audited financial statements for each year from 2008 through 2018 (including the sections concerning "Subsequent Events"), and HCMLP specifically refers Defendants to those audited financial statements, and (c) it is unreasonable to expect any witness to specifically recall the identity of all affiliated borrowers, and the amounts, dates, and terms of all loans made to affiliated borrowers, including whether, when, and to what extent any such affiliated loans were forgiven.

Subject to those objections, HCMLP will tender a witness prepared to testify as to loans it made to employees or officers that were forgiven, in whole or in part, during the period 2008 through the Petition Date.

<u>HCMLP objects to Topics No. 11</u> on the grounds that (a) there is no time limitation, (b) documents concerning Mr. Dondero's compensation for the period 2016 through 2020 (the "Compensation Documents") have been or will be produced and HCMLP specifically refers Defendants to the Compensation Documents, and (c) it is unreasonable to expect any witness to specifically recall the specific amounts and components of Mr. Dondero's compensation from 2016 and 2020.

Subject to those objections, HCMLP will tender a witness prepared to testify as to loans it made to employees or officers that were forgiven, in whole or in part, during the period 2008 through the Petition Date.

HCMLP objects to Topic No. 12 on the grounds that it is (a) overly broad, unduly burdensome, and not relevant to the claims or defenses in this adversary proceeding, and (b) none of the Defendants who served the attached Rule 30(b)(6) notice is or was a party to a Shared Services Agreement with HCMLP.

Based on the forgoing, HCMLP will not proffer a witness to testify as to Topic No. 12.

HCMLP objects to Topic Nos. 13, 14, 15, 16, and 17 to the extent those topics assume that HCMLP had any contractual or legal duty or obligation to take or refrain from taking the actions described therein.

Subject to those objections, and any additional objections referred to below, HCMLP will tender a witness prepared to testify on Topics 13, 14, 15, 16, and 17.

HCMLP objects to Topic No. 14 on the ground that the phrase "may have previously had any role" is speculative, vague, and ambiguous.

Subject to that objection, HCMLP will tender a witness prepared to testify as to those referenced employees who actually processed, made, facilitated or coordinated such payments, if any.

HCMLP objects to Topic No. 15 on the grounds that the phrase (a) "[a]ny communications or instructions that may have been given" is speculative, vague, and ambiguous, and (b) there is no time limitation.

Subject to those objections, HCMLP will tender a witness prepared to testify as to communications or instructions that were actually given from 2018 to the present, if any.

From: Aigen, Michael P. [mailto:michael.aigen@stinson.com]

Sent: Thursday, October 07, 2021 2:49 PM

To: Rukavina, Davor <drukavina@munsch.com>; 'zannable@haywardfirm.com' <zannable@haywardfirm.com>; John A. Morris <jmorris@pszjlaw.com>; Deitsch-Perez, Deborah R. <deborah.deitschperez@stinson.com>; Douglas Draper <ddraper@hellerdraper.com>

Cc: Vasek, Julian <<u>jvasek@munsch.com</u>>; Berghman, Thomas <<u>tberghman@munsch.com</u>>; Clay Taylor (clay.taylor@bondsellis.com) <clay.taylor@bondsellis.com>; Bryan Assink (bryan.assink@bondsellis.com)

<bryan.assink@bondsellis.com>; Jeff Pomerantz < jpomerantz@pszjlaw.com>; Hayley R. Winograd < hwinograd@pszjlaw.com>

Subject: RE: NexPoint Notice of 30(b)(6) to Debtor

Please see attached notice for the Seery/30B6 deposition.

Michael P. Aigen

Partner

STINSON LLP

3102 Oak Lawn Avenue, Suite 777 Dallas, TX 75219

Direct: 214.560.2201 \ Bio

STINSON.COM

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From: Rukavina, Davor <drukavina@munsch.com>

Sent: Thursday, October 7, 2021 11:42 AM

To: 'zannable@haywardfirm.com' <zannable@haywardfirm.com>; John A. Morris <jmorris@pszjlaw.com>; Deitsch-Perez,

Deborah R. <deborah.deitschperez@stinson.com>; Douglas Draper <ddraper@hellerdraper.com>

Cc: Vasek, Julian <jvasek@munsch.com>; Berghman, Thomas <tberghman@munsch.com>; Aigen, Michael P.

<michael.aigen@stinson.com>; Clay Taylor (clay.taylor@bondsellis.com) <clay.taylor@bondsellis.com>; Bryan Assink (bryan.assink@bondsellis.com)
bryan.assink@bondsellis.com>; Jeff Pomerantz <jpomerantz@pszjlaw.com>; Hayley R.

Case 21-03005-sgj Doc 134-4 Filed 12/18/21 Entered 12/18/21 02:10:25 Page 248 of 474

Winograd < hwinograd@pszjlaw.com >

Subject: NexPoint Notice of 30(b)(6) to Debtor

External Email - Use Caution

Counsel, please see attached notice.

Thank you

Davor Rukavina, Esq.

Munsch Hardt Kopf & Harr, P.C. 500 N. Akard Street, Suite 3800 / Dallas, Texas 75201-6659

Direct: +1.214.855.7587 / drukavina@munsch.com / munsch.com

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Page 1
1
         IN THE UNITED STATES BANKRUPTCY COURT
          FOR THE NORTHERN DISTRICT OF TEXAS
2
                DALLAS DIVISION
3
                         )Chapter 11
   In re:
   HIGHLAND CAPITAL MANAGEMENT, LP, )
                       )Case No.
5
        Debtor.
                          )19-34054-SGJ-11
   HIGHLAND CAPITAL MANAGEMENT, LP, )
7
        Plaintiff,
8
                        )Advisory Proceeding No.
     VS.
                       )21-03004
   NEXPOINT ADVISORS, LP: JAMES
   DONDERO; NANCY DONDERO; and THE )
   DUGABOY INVESTMENT TRUST.
10
11
         Defendants.
                            )
12
          ***********
13
               REMOTE DEPOSITION OF
                DUSTIN NORRIS
14
                December 1, 2021
15
         DUSTIN NORRIS, produced as a witness at the
16
17
     instance of the Highland Capital Management, was
18
     duly sworn and deposed in the above-styled and
19
     numbered cause on December 1, 2021, from
20
     10:01 a.m. CST to 3:25 p.m. CST, stenographically
21
     reported, pursuant to the Federal Rules of Civil
22
     Procedure and the provisions stated on the record.
23
     Job Number:
                   203362
    Reported by:
                 Rebecca A. Graziano, CSR, RMR, CRR
24
              Texas CSR 9306
             California CSR 14407
25
              Illinois CSR 084.004659
```

Page 1 APPEARANCES	1 INDEX	Page 3
2 (all attendees appearing via remote videoconference)	INDEX	PAGE
3	2	TAGE
4 REPRESENTING HIGHLAND CAPITAL MANAGEMENT, LP:		MORRIS 5
5 John Morris, Esq. Hayley Winograd, Esq.	4	WOTATIO
6 PACHULSKI STANG ZIEHL & JONES LLP	5	
780 Third Avenue		DITO
7 New York City, New York 10017	6 EXHIB	
8 9	7 NUMBER DESCRIP	
10 REPRESENTING NEXPOINT ADVISORS, LP:	8 Exhibit 185 Plaintiff's Th	
11 Davor Rukavina, Esq.	9 Rule 30(b)(6) D	
MUNSCH HARDT KOPF & HARR, PC		al Management Fund
12 500 North Akard Street	11 Advisors	7
Dallas, Texas 75201	12	
14	13	
15 REPRESENTING JAMES DONDERO, NANCY DONDERO, HCRE,	14 PREVIOUSL	LY MARKED EXHIBITS
and HCMS:	15 NUMBER DESCRIP	PTION PAGE
16 Michael Aigen, Esq.	16 Exhibit 1 Complaint for	or (I) Breach of
17 STINSON LLP	17 Contract and (II	I) Turnover of
3102 Oak Lawn Avenue	18 Property of the	Debtor's Estate 38
18 Dallas, Texas 75219	19 Exhibit 5 Defendant's	Original Answer 29
19 20	20 Exhibit 13 Defendant's	Amended Answer 158
21 ALSO PRESENT:	21 Exhibit 36 Email Chain	; Bates D-HCMFA290880
22 La Asia Canty, Paralegal,	22 through 290883	3 87
Pachulski Stang Ziehl & Jones	23	
23 24	24	
25	25	
Page		Page 5
1 PREVIOUSLY MARKED EXHIBITS	1 PROCEE	
2 NUMBER DESCRIPTION PAGE	2 (On the record at	10:01 a.m. CST)
3 Exhibit 45 Highland Capital Management Fund	3 (Witness duly	•
4 Advisors, LP, Consolidated	4 DUSTIN N	•
5 Financial Statements and	5 being first duly swom, t	•
6 Supplemental Information, 12/31/18;	6 EXAMINA	
7 Bates D-CNL-002273 through 002296 46		TION
8 Exhibit 59 Supplemental 15(c) Info Request;		Ar Norrio Acyou may
	•	Mr. Norris. As you may
v	•	n Morris. I'm an attorney
10 Exhibit 147 BBVA Compass Bank Statement, Date	10 at Pachulski Stang Ziel	
11 Ending 5/31/19 (no Bates range) 51	11 counsel to the reorgani	ized debtor known as
	_	
12 Exhibit 182 Memo Dated 5/28/19 (no Bates range) 119	12 Highland Capital Mana	agement, LP, and we're here
	_	_
12 Exhibit 182 Memo Dated 5/28/19 (no Bates range) 119	12 Highland Capital Mana	ay.
12 Exhibit 182 Memo Dated 5/28/19 (no Bates range) 119	12 Highland Capital Mana13 for your deposition toda	ay.
12 Exhibit 182 Memo Dated 5/28/19 (no Bates range) 119 13 14	 Highland Capital Mana for your deposition toda Do you unders A Yes, sir. 	ay.
12 Exhibit 182 Memo Dated 5/28/19 (no Bates range) 119 13 14 15	 Highland Capital Mana for your deposition toda Do you unders A Yes, sir. Q And do you under 	ay. stand that? erstand that you're being
12 Exhibit 182 Memo Dated 5/28/19 (no Bates range) 119 13 14 15 16	 Highland Capital Mana for your deposition toda Do you unders A Yes, sir. Q And do you under deposed today in your 	ay. stand that? erstand that you're being capacity as what's called a
12 Exhibit 182 Memo Dated 5/28/19 (no Bates range) 119 13 14 15 16 17	 Highland Capital Mana for your deposition toda Do you unders A Yes, sir. Q And do you unders deposed today in your Rule 30(b)(6) witness of 	ay. stand that? erstand that you're being capacity as what's called a on behalf of Highland
12 Exhibit 182 Memo Dated 5/28/19 (no Bates range) 119 13 14 15 16 17 18	 Highland Capital Mana for your deposition toda Do you unders A Yes, sir. Q And do you unders deposed today in your Rule 30(b)(6) witness of Capital Management F 	ay. stand that? erstand that you're being capacity as what's called a on behalf of Highland
12 Exhibit 182 Memo Dated 5/28/19 (no Bates range) 119 13 14 15 16 17 18 19 20	 Highland Capital Mana for your deposition toda Do you unders A Yes, sir. Q And do you unders deposed today in your Rule 30(b)(6) witness of Capital Management F A I do. 	ay. stand that? erstand that you're being capacity as what's called a on behalf of Highland Fund Advisors, LP?
12 Exhibit 182 Memo Dated 5/28/19 (no Bates range) 119 13 14 15 16 17 18 19 20 21	12 Highland Capital Mana 13 for your deposition toda 14 Do you unders 15 A Yes, sir. 16 Q And do you under 17 deposed today in your 18 Rule 30(b)(6) witness of 19 Capital Management F 20 A I do. 21 Q Can we refer to b	ay. estand that? erstand that you're being capacity as what's called a on behalf of Highland Fund Advisors, LP? Highland Capital
12 Exhibit 182 Memo Dated 5/28/19 (no Bates range) 119 13 14 15 16 17 18 19 20 21	12 Highland Capital Mana 13 for your deposition toda 14 Do you unders 15 A Yes, sir. 16 Q And do you under 17 deposed today in your 18 Rule 30(b)(6) witness of 19 Capital Management F 20 A I do. 21 Q Can we refer to b 22 Management Fund Ad	ay. stand that? erstand that you're being capacity as what's called a on behalf of Highland Fund Advisors, LP?
12 Exhibit 182 Memo Dated 5/28/19 (no Bates range) 119 13 14 15 16 17 18 19 20 21 22 23	12 Highland Capital Mana 13 for your deposition toda 14 Do you unders 15 A Yes, sir. 16 Q And do you under 17 deposed today in your 18 Rule 30(b)(6) witness of 19 Capital Management F 20 A I do. 21 Q Can we refer to b 22 Management Fund Ad 23 A Yes, that works.	ay. estand that? erstand that you're being capacity as what's called a on behalf of Highland Fund Advisors, LP? Highland Capital dvisors, LP, as "HCMFA"?
12 Exhibit 182 Memo Dated 5/28/19 (no Bates range) 119 13 14 15 16 17 18 19 20 21	12 Highland Capital Mana 13 for your deposition toda 14 Do you unders 15 A Yes, sir. 16 Q And do you under 17 deposed today in your 18 Rule 30(b)(6) witness of 19 Capital Management F 20 A I do. 21 Q Can we refer to 1 22 Management Fund Ad 23 A Yes, that works. 24 Q And can we refer	ay. estand that? erstand that you're being capacity as what's called a on behalf of Highland Fund Advisors, LP? Highland Capital

Page 6 1 Dustin Norris	1 Dustin Norris	Page 7
2 A Yes.	2 accurate answers, will you let me know that?	
3 Q Okay. Are you aware that your answers	3 A Yes.	
4 4 1 311 111014540	4 Q If you need a break at any time, will you	
•		
6 Q Okay. Have you seen the notice that was		
7 served by Highland on HCMFA in connection with	7 Q Okay.	
8 this deposition?	8 MR. MORRIS: I would ask my	
9 A I have.	9 colleague, Ms. Canty, to put up on the	
10 Q Okay. I've I've examined you before;	10 screen the Rule 30(b)(6) deposition	
11 right?	11 notice.	
12 A Yes.	12 (Norris Exhibit 185 marked.)	
13 Q Okay. So the rules are the exact same,	13 (Reporter discussion off the record.)	
14 and they are very simple. If I ask a question, I	14 MR. MORRIS: Okay. Asia, what	
15 would ask you to refrain from answering until I've	15 exhibit number should we put on this	
16 completed my question; is that fair?	16 document?	
17 A Yes, it is. Thank you.	17 MS. CANTY: 185.	
18 Q And if I begin a question or respond	18 MR. MORRIS: Okay. Davor and	
19 before you've completed your answer, will you let	19 Michael, this will be Exhibit 185.	
20 me know that?	20 And if we can scroll down and show	
21 A Yes.	21 it to Mr. Norris.	
22 Q We're going to be putting documents up on	22 BY MR. MORRIS:	
23 the screen from time to time today. If at any	23 Q Do you see that this is the plaintiff's	
24 time you believe you need to see other portions of	24 third amended notice of deposition for today?	
25 the document in order to give complete and	25 MR. RUKAVINA: And just so you	
Page 8		Page 9
		0
1 Dustin Norris	1 Dustin Norris	
2 know, John and Dustin, I did not send this	 Dustin Norris A but the original complaint from HCMLP. 	
2 know, John and Dustin, I did not send this	2 A but the original complaint from HCMLP.	
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1 Dustin Norris	Page 10 Page 11 1 Dustin Norris
2 that right?	2 and 9. Are they the same as what you have?
3 A That's correct.	3 A Can you scroll down for 9?
4 Q And you have that with you; right?	
5 A Ido.	5 A They look to be the same, yes.
6 Q Okay. Are you prepared to testify on	6 Q Okay. And let's just look at the last
7 behalf of HCMFA today on in connection with	7 few. How about 10 through 14? Are they the same
8 each of the topics in the deposition notice?	8 as the topics that are in your second amended
9 A Yes, Iam.	9 notice?
10 Q All right.	10 A They look to be the same, yes.
11 MR. MORRIS: Let's just, for the	11 Q Okay. And did you do anything to prepare
12 record, scroll down to make sure that the	12 for today's deposition?
13 topics are the same as the the one that	13 A I did.
14 Mr. Norris has in front of him.	14 Q What did you do?
15 BY MR. MORRIS:	15 A I reviewed all of the pleadings. I
16 Q Do you see the first five topics on the	16 reviewed all of the the documents that were, I
17 screen?	17 believe, responsive to to help me to respond to
18 A I do.	18 this, look through your exhibits. I had met with
19 Q All right. Can you confirm that they're	19 Mr. Rukavina as counsel. I met and spoke with
20 the same topics that you have in the second	20 Mr. Dondero. I spoke with Jason Post.
21 amended notice of deposition?	21 I spoke with I reviewed my
22 A Yes. I'm looking now.	22 documents internally and emails, things that I
23 Yes, they all are the same.	23 might have had, confirmed with our IT group that
24 Q Okay. And if we can continue to scroll	24 they have provided all documents responsive to
25 down, you see Topics 6, 7, and 8 up on the screen,	25 your discovery requests.
4 Profit Monto	Page 12 Page 13
1 Dustin Norris	1 Dustin Norris
2 I reviewed the depositions of	2 Q Is there any particular reason you didn't
3 Mr. Seery, of Frank Waterhouse, Dave Klos, and	3 speak with Mr. Waterhouse?
4 Kristin Hendrix. I met in person and by Zoom with	4 A Yes.
5 Mr. Rukavina over the last few weeks, and so	5 Q And what why didn't you speak with
6 that that's the general you know, there may	6 Mr. Waterhouse?
7 have been other things, but that's the general	7 A My my yeah, sorry.
8 overview of the things that I did	8 My understanding is his counsel did
9 Q I appreciate	9 not allow us to speak with him regarding this,
10 A to understand the company's position.	10 because HCMLP had sued him for various things, and
11 Q I appreciate that.	11 so we weren't allowed to talk with him.
12 So just focusing in on the people that	12 You'll you'll note that DC, earlier
13 you spoke with in connection with your	13 on, had spoken to him. I believe that was back in
14 preparation, one was Davor; right?	14 April, if you look back and I'd refer you to
15 A Correct.	15 Mr. Sauter's declaration. But in preparation for
	16 this, we did not speak with him. We needed to
16 And I I may have I don't know if	
,	·
17 I said it or not, but DC Sauter as well I also	17 wait for his deposition based on his attorney's
17 I said it or not, but DC Sauter as well I also 18 spoke with.	17 wait for his deposition based on his attorney's18 instructions.
 17 I said it or not, but DC Sauter as well I also 18 spoke with. 19 Q Okay. So the other people are DC Sauter, 	 17 wait for his deposition based on his attorney's 18 instructions. 19 Q How many times did you speak with
 17 I said it or not, but DC Sauter as well I also 18 spoke with. 19 Q Okay. So the other people are DC Sauter, 20 Jason Post, and Mr. Dondero. Do I have that 	 17 wait for his deposition based on his attorney's 18 instructions. 19 Q How many times did you speak with 20 Mr. Dondero about today's deposition?
 17 I said it or not, but DC Sauter as well I also 18 spoke with. 19 Q Okay. So the other people are DC Sauter, 20 Jason Post, and Mr. Dondero. Do I have that 21 right? 	 17 wait for his deposition based on his attorney's 18 instructions. 19 Q How many times did you speak with 20 Mr. Dondero about today's deposition? 21 A Multiple times over the last few weeks.
 17 I said it or not, but DC Sauter as well I also 18 spoke with. 19 Q Okay. So the other people are DC Sauter, 20 Jason Post, and Mr. Dondero. Do I have that 21 right? 22 A Correct. 	 wait for his deposition based on his attorney's instructions. Q How many times did you speak with Mr. Dondero about today's deposition? A Multiple times over the last few weeks. Q And was Mr. Rukavina present for those
 17 I said it or not, but DC Sauter as well I also 18 spoke with. 19 Q Okay. So the other people are DC Sauter, 20 Jason Post, and Mr. Dondero. Do I have that 21 right? 22 A Correct. 23 Q Did you speak with Frank Waterhouse at 	 wait for his deposition based on his attorney's instructions. Q How many times did you speak with Mr. Dondero about today's deposition? A Multiple times over the last few weeks. Q And was Mr. Rukavina present for those discussions?
17 I said it or not, but DC Sauter as well I also 18 spoke with. 19 Q Okay. So the other people are DC Sauter, 20 Jason Post, and Mr. Dondero. Do I have that 21 right? 22 A Correct.	 wait for his deposition based on his attorney's instructions. Q How many times did you speak with Mr. Dondero about today's deposition? A Multiple times over the last few weeks. Q And was Mr. Rukavina present for those

1 Dustin Norris	Page 14	1	Dustin Norris	Page 15
2 Mr. Dondero about today's deposition?		2	Q Did you ask him in connection with your	
3 A Yeah. Discussed with him general view of		3	preparation for today's deposition?	
4 the company from his perspective. We discussed		4	A What I did ask, I asked him - I said,	
5 particularly around and we'll get into more		5	"Did you tell Frank Waterhouse that there should	
6 details on this but around the purpose and			be that this should be a loan?"	
7 transfer of cash, the seven-and-a-half million		7	And his response was, "No, that I	
8 dollars. And I guess there were two transactions.			never told Frank it should be a loan, and Frank	
9 Discussed with him what he remembered			never asked if it should be a loan." And that the	
10 in discussions with Frank Waterhouse when he			intent and the reason for the transfer was	
11 instructed him to transfer the cash, and any			compensation for the NAV error.	
12 recollection he had regarding the notes or the		12	And so that was he did not know	
13 the the promissory notes.			and if I if I remember correctly, looking at	
14 And so those were the general topics.			his deposition, I believe he did not know about	
15 And we did talk about			the notes at that time and found out about them	
16 Q Did Mr			much later.	
17 A Sorry. Go ahead.		17	Q I know, and I'm trying to understand from	
18 Q Yeah, I don't mean to step on your words.			you if you can tell me, as HCMFA's 30(b)(6)	
			representative, whether you can share with me when	
19 A No, no.20 We talked about the NAV error, we			Mr. Dondero first learned of the existence of the	
· ·		20 21	notes.	
		21 22		
			A It it would have been I believe, if	
· ·			my understanding is correct, it would have been	
24 first learned of the existence of the notes?			after they were demanded.	
25 A No.	4	25	Q After they were?	
1 Dustin Norris	Page 16	1	Dustin Norris	Page 17
2 A Demanded.		2	and tell Mr. Morris what you can and can't	
3 Q Okay. How about your conversations with		_	answer.	
4 Mr. Post? Did the subject of when he learned		4	THE WITNESS: Yeah.	
5 about the existence of the notes come up?		5	So early on with Mr. Sauter,	
6 A No. That was not a discussion with		6	discussions were around if I had any	
7 Jason Post Post talking with Jason was more			knowledge of the note, if he had any	
8 around the NAV error, the events surrounding the			knowledge of the note, trying to discover	
9 NAV error, facts and circumstances around the NAV			what the notes were, what they were	
10 error.		10	related to, and neither of us had	
11 Q Okay. And were your discussions with			knowledge related to notes.	
12 Mr. Sauter limited to the investigation that he		12	And then discussions around more	
13 undertook earlier this year that's reflected in			generally I'm trying to think back.	
14 his declaration?			There were many discussions with	
15 A I would say it's not limited to that.			Mr. Sauter on the topic.	
16 Q What other topics did you discuss with		16	General facts and circumstances of	
17 Mr. Sauter beyond the investigation that he			what he was learning from his	
18 undertook that's reflected in his declaration?			investigation in which all of which I	
19 MR. RUKAVINA: And I would just			would refer you to his declaration.	
20 caution you, Dustin, that to the extent		20	And then subsequent, talking with	
21 that you and Mr. Sauter discussed factual		20 21	him regarding the I'm trying to	
22 matters, that's fair game.			recollect the the key components.	
23 But as far as if you discussed		22 23	But it was general overview of	
•			of the notes and NAV error and the	
So be careful with your answer, please,	4	25	process. He wasn't here during much of	

1 Dustin Norris	Page 18 Page 1 Dustin Norris
2 that time period or involved, and so we	2 I'm looking at the incumbency certificates here
3 were talking together based on what he was	3 and in 2019 in April became executive vice
4 doing.	4 president. So from January to January 2018 to
5 BY MR. MORRIS:	5 April 2019, I was secretary and then became
6 Q Who are you employed by today?	6 executive vice president.
7 A NexPoint Advisors.	7 Q When did you first learn of the existence
8 Q Do you hold any position or title with	8 of the notes?
	9 A So it was after they were demanded, and it
10 A Ido.	10 was so I believe the demand came in in early
I1 Q And what's your position or title with	11 2020 2021. So January-ish 2021.
12 HCMFA?	12 Q Do you have any role or any title with any
13 A Executive vice president is my officer	13 of the funds that are managed by either NexPoint
14 role.	14 or HCMFA?
15 Q And when did you become an officer of	15 A I do.
6 HCMFA?	16 Q Can you describe those roles or titles for
7 A So I I was originally secretary and	17 me, please?
8 I can't remember if I was assistant secretary, but	18 A Yeah. I'm I'm the executive vice
19 I've been involved with HCMFA since 2012. I don't	19 president of the funds, and my role more broadly
20 know if I was added as an assistant secretary at	20 is I am the head of distribution and chief product
21 that time; but for many for several years, I've	21 strategist. And so in that role, I lead the sales
22 been an officer of HCMFA.	22 and business development and marketing for the
23 Q And you were an officer in 2018 and 2019;	23 funds, more broadly.
24 is that right?	
25 A Correct. I was secretary in 2018, and	25 Advisors, LP?
F 1 Dustin Norris	Page 20 Page 2 1 Dustin Norris
2 A I am executive vice president in the	2 Advisors, LP, together as "the advisers"?
3 officer capacity, and my role is as an employee	3 A That's fine.
4 is head of distribution and chief product	4 Q Okay. So is it fair to say that you were
	5 the executive vice president, which was an officer
3	
6 Q Okay. So just to summarize, you're the	6 position, for each of the advisers as of April
7 avagetive vice president of New Point Advisors I De	
7 executive vice president of NexPoint Advisors, LP;	7 2019?
8 correct?	7 2019? 8 A Yes.
8 correct? 9 A Correct.	7 2019? 8 A Yes. 9 Q Okay. And
8 correct? 9 A Correct. 10 Q And that's an officer position; correct?	7 2019? 8 A Yes. 9 Q Okay. And 10 A I believe that's correct.
8 correct? 9 A Correct. 10 Q And that's an officer position; correct? 11 A It is.	 7 2019? 8 A Yes. 9 Q Okay. And 10 A I believe that's correct. 11 Q And you also serve as the executive vice
8 correct? 9 A Correct. 10 Q And that's an officer position; correct? 11 A It is.	7 2019? 8 A Yes. 9 Q Okay. And 10 A I believe that's correct.
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1 Dustin Norris	Page 22 Page 23
2 A I believe so. I'd have to go back and	2 identity of officers, directors, and employees of
3 look for sure, but I believe. There may have been	3 HCMFA?
la l	4 A Uh-huh.
l = '	
· · · · · · · · · · · · · · · · · · ·	
6 when you were not, at any point since 2018 to the	6 on the document that you have in front of you?
7 present?	7 A Yes.
8 A I don't believe so.	8 Q Okay.
9 Q Okay. So to the best of your	9 A That is which topic?
10 recollection, you've served as an executive vice	10 Q 13.
11 president of each of the funds managed by the	11 A 13, yes.
12 advisers since at least the beginning of 2018; is	12 Q Okay. So let's focus on 13 for a moment.
13 that fair?	13 Can you can you identify for me
14 A No. That's that's different than my	14 HCMFA's officers from January 1st, 2018, to the
15 prior testimony that I was secretary until	15 present
16 April	16 A Yes.
17 Q I apologize. Let me restate the question.	17 Q - including names and titles?
18 You've been an officer of of the	18 A Yes.
19 funds managed by the advisers on a continuous	19 Q Okay.
20 basis since at least the beginning of 2018; fair?	20 A So from January 1st, 2018 and I don't
21 A I believe that's correct, yes.	21 have I I'm assuming that the dates that I
22 Q Thank you for the question for for	22 have on the incumbency certificates are complete,
23 the correction.	23 but I'm not certain, and if there was one in
So as I think you pointed out earlier,	24 between, but I'm assuming this is - that the
25 one of the topics on the 30(b)(6) notice is the	25 dates I have changing is is effective when they
P	Page 24 Page 25
1 Dustin Norris	Page 24 Page 25 1 Dustin Norris
1 Dustin Norris	1 Dustin Norris
 Dustin Norris changed. 	1 Dustin Norris 2 Q Okay.
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Dustin Norris changed. But Brad Ross was president of HCMFA from January 1st, 2018, until, I believe, February 2018 sorry yeah, until February 2018. In that same time period, Brad Ross, president; Trey Parker, executive vice president; Frank Waterhouse, treasurer; Dustin Norris, secretary. And effective 26th of February Q I apologize. What is Mr. Parker's title? And Executive vice president. Q Thank you. And beginning February 26th, 2018, Trey Parker, executive vice president; Frank Waterhouse, treasurer; and Dustin Norris, secretary; and no longer president, Brad Ross. There's no president on the lineup. So continuing on, April 11th, 2019, Dustin Norris, executive vice president; Frank Waterhouse, treasurer; Lauren Thedford, secretary.	1 Dustin Norris 2 Q Okay. 3 A And February 18th, 2021, Dustin Norris, 4 executive vice president; Frank Waterhouse, 5 treasurer; Brian Mitts, assistant treasurer; David 6 Willmore, secretary. So Lauren Thedford, no 7 longer secretary. 8 Q And have there been any changes since 9 February 2021? 10 A Yes. You have April 8, 2021, Dustin 11 Norris, executive president; Frank Waterhouse, 12 treasurer; Will Mabry, assistant treasurer; and 13 Stephanie Vitiello, secretary. 14 Again, I I don't have this is 15 based on what was provided to me with effective 16 dates. I don't know if there was any that were 17 missing, if that's complete, but I I believe 18 those are accurate. 19 Q Is it fair to say that you're relying on 20 exclusively on the incumbency certificates to 21 identify the officers of HCMFA since January 1st, 22 2018?

1 Dustin Norris	Page 26	Dustin Norris	Page 27
2 officers of HCMFA since January 1st, 2018?	2		
3 A I don't, no.	3		
4 Q Okay. Can you identify for me HCMFA's		Jim Dondero is the sole director.	
5 direct and indirect owners since January 1st,	5		
6 2018?	6		
7 A I can, yes. Generally Jim Dondero and	7		
8 Mark Okada are the indirect owners through trusts.	8		
9 They own approximately two-thirds, Jim Dondero, a	g		
10 little less than a third, Mark Okada, with a	10		
	1.	<u> </u>	
• .		_	
12 Q And who is the general partner? 13 A It's a Strand entity that I believe is	12		
	1;	•	
	14	, , , ,	
15 Q So Mr. Dondero controls the general	1:		
16 partner	10	3, 1 ,	
17 A Right.	17		
18 Q of HCMFA?	18		
19 A Correct, and owns approximately two-thirds	19	•	
20 of the equity.	20	•	
21 Q And is that a controlling interest to the	2	•	
22 best of your knowledge?	22	,	
23 A Yes, I believe so.	23		
24 Q Okay. Does HCMFA have any directors?	24	3 71 37 37	
25 A It does not. It has a sole director	25	5 argument."	
1 Dustin Norris	Page 28	Dustin Norris	Page 2
2 Do you see that?	2		
3 A Ido.	3		
4 Q Are you prepared to answer questions on		-	
	4	· Ondinal answer correct?	
	5	9 ,	
5 that topic?	5	A That's correct.	
5 that topic? 6 A I am.	_	A That's correct. Q Okay. And Topic Number 1 on your list, in	
5 that topic? 6 A I am. 7 Q All right. You're aware that obviously	5 6 7	A That's correct. Q Okay. And Topic Number 1 on your list, in fact, is the answer, correct, the original answer?	
 5 that topic? 6 A I am. 7 Q All right. You're aware that obviously 8 Highland has commenced an adversary proceeding 	5 6 7 8	A That's correct. Q Okay. And Topic Number 1 on your list, in fact, is the answer, correct, the original answer? A That's correct. It's Topic Number 1.	
 5 that topic? 6 A I am. 7 Q All right. You're aware that obviously 8 Highland has commenced an adversary proceeding 9 against HCMFA to collect on two promissory notes; 	5 6 7 8	A That's correct. Q Okay. And Topic Number 1 on your list, in fact, is the answer, correct, the original answer? A That's correct. It's Topic Number 1. MR. MORRIS: Okay. Can we put	
 5 that topic? 6 A I am. 7 Q All right. You're aware that obviously 8 Highland has commenced an adversary proceeding 9 against HCMFA to collect on two promissory notes; 10 right? 	5 6 7 8 9	A That's correct. Q Okay. And Topic Number 1 on your list, in fact, is the answer, correct, the original answer? A That's correct. It's Topic Number 1. MR. MORRIS: Okay. Can we put Deposition Exhibit 5 up on the screen?	
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1 Dustin Norris	Page 30	1 Dustin Norris	Page 31
Dustin Norris Okay. Is the copy that you have with you		Dustin Norris A None that I know of.	
3 dated March 1st, 2021?		3 Q And there was no restriction or limitation	
4 A Yes, it is.		4 on HCMFA's ability to speak with you at or prior	
5 Q And if you can turn to Page 6 of 7, does		5 to March 1st, 2021; correct?	
		6 A That's correct.	
6 It appear to be the exact same as what appears on 7 the screen, showing the March 1st, 2021, date?		7 Q How about Ms. Thedford? Are you aware of	
8 A It does.			
		8 any restriction or limitation on HCMFA's ability9 to speak with her prior to March 1st, 2021?	
		10 A Yes.	
10 date, as "the answer date"? 11 A Yes.		11 Q Okay. And what restriction was that?	
		•	
		, 3	
13 affirmative defenses in this pleading; correct?14 A That's my understanding.		13 legal team. She was an employee of HCMLP. And	
, 3		14 during this time period, we had outsourced our	
15 Q Okay. And HCMFA had full access to you as		15 legal and compliance functions to them. And if	
16 of March 1st, 2021; correct?		16 I would refer you to Mr. Sauter's declaration and	
17 A Yes.		17 the attachments and schedules. There's a very	
18 Q And HCMFA had full access to Mr. Dondero		18 strict direction from Mr. Seery that	
19 as of March 1st, 2021; correct?		19 individuals particularly on the legal team	
20 A In the term "full access," they could have		20 could not work on anything that would be inimical	
21 talked to him, yes.		21 to the debtor.	
22 Q Right. And there was no restriction from		22 Q Okay.	
23 the bankruptcy court or otherwise on HCMFA's		23 A And so Ms. Thedford, on multiple	
24 ability to communicate with Mr. Dondero that you		24 occasions, told us she was unable to work on	
25 know of; correct?	;	25 things, and that began back in fall of 2000	
	Page 32		Page 33
1 Ductin Morris	1 agc 52	1 Dustin Norris	
1 Dustin Norris	1 age 32	1 Dustin Norris	
2 fall of 2020 late summer 2020, actually. And	r age 32	2 they were working on.	3
2 fall of 2020 late summer 2020, actually. And3 so she was not accessible for things like this.	1 age 02	2 they were working on.3 Q Did – did – were there any restrictions	3.11
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1 Dustin Norris	Page 34	1	Dustin Norris	Page 35
2 Q Okay. But it is fair to say that between		-	could have been something, but	
3 January 21st, 2021, the day that the complaint was		_	Q Okay. I'm just asking about your	
4 filed, and March 1st, 2021, the date that HCMFA			knowledge, not what could have been.	
5 filed its original answer, HCMFA had complete and		5	All right. So we're going to use	
6 unfettered access to you, to Mr. Dondero, and			March 1st, 2021, as the answer date.	
7 Mr. Post; correct?		7	Are you aware of any document that	
8 A Again, the complete and unfettered access			HCMFA filed with the bankruptcy court prior to the	
9 on the Jason Post aspect, they could have talked			answer date that concerns or relates in any way to	
10 to him. I'm not sure if there were any other			the notes?	
11 restrictions related to what he had or information		11	A I'm thinking if I'm aware.	
12 he had or based on his prior role of the debtor,		12	Not that I'm aware of.	
13 he was restricted on what he could or couldn't		13	Q Are you aware withdrawn.	
14 talk about, if he had any lease agreement. I'm		14	Do you know what a "pleading" is, if I	
15 not certain on that. But, yes, we could talk			use that phrase?	
16 to or HCMFA could talk to Mr. Post.		16	A I believe so. These are the answers that	
17 Q Okay. And the topics that you just raised			we gave. The first answer, the amended answer,	
18 are speculation on your part; correct?			and the second amended answer, that – I believe	
19 A It is.				
		19 20	those are the two pleadings. Is that correct? Q You know what? I think my first question	
			• •	
21 you don't have any knowledge of any restriction or			was broad enough, because I just used the word	
22 limitation placed on HCMFA in respect of its			"document," so I'm going to let that sit.	
23 ability to communicate with Mr. Post between		23	Are you aware of any argument that	
24 January 21st, 2021, and March 1st, 2021; correct?			anybody ever made on behalf of HCMFA prior to the	
25 A Based on my personal knowledge, no. There	4	25	answer date that concerned or related to any of	
1 Dustin Norris	Page 36	1	Dustin Norris	Page 3
2 the notes?		_	A Okay. That makes sense. Okay.	
3 A And you mean an argument to the Court?			Q And so if I use the phrase "you," just as	
4 Q Yes.			we did in the deposition notice, I'm really	
5 A Not that I'm aware of.			referring to HCMFA; is that fair?	
5 A Not triat in aware of.			Cicini iq to i loivii A, is triat iair:	
6 O Okay Are you aware of any statement of		_	-	
		6	A That's fair.	
7 any kind that was made to the bankruptcy court		6 7	A That's fair. Q Okay. So let me just ask the questions	
7 any kind that was made to the bankruptcy court 8 prior to the answer date that concerned or related		6 7 8	A That's fair. Q Okay. So let me just ask the questions again with that clarification.	
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1 Dustin Norris	Page 38	Dustin Norris	Page 39
2 A Not that I recall.	2	Q And you've seen that before; right?	
3 Q Okay. When did HCMFA first learn of the	3	A I have.	
4 existence of the notes?	4	Q Okay. And are you do you see that it	
5 A So HCMFA's position is that they learned	5	was sent to Mr. Waterhouse?	
6 of them when they were demanded, or after they	6	A Yes.	
7 were demanded. I don't even know that when we	7	Q And Mr. Waterhouse was the treasurer of	
8 received or who they were sent to, but it was	8	HCMFA on December 3rd, 2020; correct?	
9 after they were demanded.	9	A Correct.	
10 Q Okay. And do you recall when they were	10	Q Okay. So is it fair to say that HCMFA	
11 demanded?	11	knew of the existence of the notes on	
12 A I don't have the exact date. If you could	12	December 3rd, 2020?	
13 remind me or show a document, that might be	13	A It's safe to say that Frank Waterhouse	
14 helpful. I don't know if you have the demand, or	14	received this. I'm not sure the date exactly	
Lagranda de la companya de la compa		when when the company became aware. Frank,	
	15	yes, is an officer. He's also the irony here,	
•	16	he's CFO of the debtor who is demanding this, so	
17 MR. MORRIS: Can we put Exhibit 1 18 up on the screen?	17	he's demanding it from himself. I know it's	
•		-	
19 It's actually the complaint the20 original complaint, sir.	19	coming from from who is sending it, but at this time, I don't know when Mr. Dondero or other	
,		officers became aware of it. Sometime after	
21 (Exhibit 1 tendered.) 22 BY MR. MORRIS:	21		
	22	December 3rd.	
23 Q If you go to Exhibit 3, do you see there's	23	Q Okay. Do you know if HCMFA ever responded	
24 a demand letter there?	24	to this demand letter prior to the time the	
25 A Yes.	25	complaint was filed on January 21st, 2021?	
1 Ductio Namio	Page 40	Dustin Norris	Page 41
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1	Dustin Norris	Page 42	1	Dustin Norris	Page 43
	question.		2	A June 2019.	
3	As HCMFA's 30(b)(6) witness today,		3	Correct.	
4	does HCMFA contend that this letter was not		4	Q As the executive vice president of HCMFA,	
5	received by Mr. Waterhouse on or about			have you ever reviewed HCMFA's audited financial	
6	December 3rd, 2020?		6	statements?	
	MR. RUKAVINA: Well, that's not our		7	A I have not.	
7					
8	contention. We agree that it was received		8	Q Is there anybody on behalf of HCMFA who is	
9	on or about that date.		9	charged with the responsibility of reading HCMFA's	
10	MR. MORRIS: Okay.		10	audited financial statements?	
11	THE WITNESS: Yeah. That's		11	A Yeah. We again, the key here is we	
12	yeah.		12	outsourced finance, accounting, back-office	
13	BY MR. MORRIS:		13	functions. It includes financial statement	
14	Q Okay. HCMFA actually knew about the notes		14	preparation. The treasurer of HCMFA is an HCMLP	
15	just weeks after they were signed; correct?		15	employee, Frank Waterhouse, at that time, and at	
16	MR. RUKAVINA: Objection; form.		16	all times that we're talking about. And so with	
17	THE WITNESS: So the debtor		17	we and Frank is a professional, and his team	
18	employees who created the notes knew about		18	are professionals, right? We outsource to an	
19	them, but it was not knowledge of HCMFA.		19	accounting group to prepare and oversee, work with	
20	Those were all Highland Capital		20	the auditors in preparation of those financials.	
21	Management, LP, employees.		21	And so they were tasked with that. And we relied	
22	BY MR. MORRIS:		22	on them. And there was not a specialist during	
23	Q So it's your testimony that HCMFA had no		23	this time period that did that.	
24	knowledge of the existence of the notes in		24	Q Does Frank Waterhouse have any	
25	June 2019; is that correct?		25	responsibility, as the treasurer of HCMFA, to make	
_	D.C.N.:	Page 44	_	D. f. N. :	Page 45
1	Dustin Norris		1	Dustin Norris	
2	sure that HCMFA's audited financial statements are		2	role, I would say the treasurer role was to	
3	true, accurate, and reliable?		3	oversee the financial aspects of the advisers.	
4	A Him and his team, yeah. We actually				
5			4	Q And was one of those aspects HCMFA's	
6	that's what we rely on them for.		5	audited financial statements?	
_	Q And did you rely on him not only in his		5 6	audited financial statements? A As yeah. And he was again, I'll	
7	Q And did you rely on him not only in his capacity as an employee of Highland, but in his		5 6 7	audited financial statements? A As yeah. And he was again, I'll reiterate, he was the CFO of Highland who was	
_	Q And did you rely on him not only in his capacity as an employee of Highland, but in his capacity as the treasurer of HCMFA?		5 6 7 8	audited financial statements? A As – yeah. And he was again, I'll reiterate, he was the CFO of Highland who was tasked with creating the financial statements for	
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1 Dustin Norris	Page 46 1 Dustin Norris	Page 47
2 on?	2 A Ido.	
3 A Based on the understanding of what a	3 MR. MORRIS: Okay. And if we could	
4 treasurer role would be. But I – I don't have	4 just scroll, I think, to the third page.	
5 any I don't have any knowledge, I'm not	5 BY MR. MORRIS:	
6 representing that we have any roles and	6 Q Do you see that it's signed by	
7 responsibilities or defined procedures that the	7 PricewaterhouseCoopers on June 3rd, 2019?	
8 treasurer does this, that, or the other.	8 A I see that the audit opinion is signed by	
9 Q Okay. Have you – as you sit here right	9 them, yes.	
10 now, have you ever seen HCMFA's audited financial	10 Q Correct. And – and you're aware that	
11 statements for the period ending December 31st,	11 PricewaterhouseCoopers was the outside auditor	
12 2018?	·	
13 A I saw them in the materials that were14 provided in your schedules, I believe.	13 financial statements; correct?14 A Given that they gave an opinion, yes.	
15 Q Okay. Let's16 A That was the first time.		
	16 that the document that's up on the screen is	
17 Q Let's take a quick look at it.	17 anything other than HCMFA's audited financial	
18 MR. MORRIS: If we could put up on	18 statements for the period ending December 31st,	
the screen the document that's been markedExhibit 45.	19 2018, do you?	
	20 And we're happy I'm happy to scroll	
21 (Exhibit 45 tendered.)	21 through whatever you need to see.	
22 BY MR. MORRIS:	22 A Yeah. And there they're distinguishing	
23 Q Okay. And do you see that this is the	23 you have an audit opinion and having audited	
24 first page of HCMFA's audited financial statements	24 financials, I assume that you have all that is	
25 for the period ending December 31st, 2018?	25 here. You showed me the first page of the	
1 Dustin Norris	Page 48 Dustin Norris	Page 49
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2 financials, which	2 backup, but I would assume that's the case.	
2 financials, which3 Q Yeah. Yeah. Let's	2 backup, but I would assume that's the case.3 Q And not only do the dollar amounts line	
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1	Page 50 Dustin Norris	1	Dustin Norris	Page 51
l l	included in the financial statements. You know,	2	Exhibit 147?	
3	I – I think we're going to get into it in our	3	(Exhibit 147 tendered.)	
4	affirmative defenses, but we dispute that the	4	BY MR. MORRIS:	
5	notes were actually valid notes, and we would say	5	Q Okay. Do you see that this is or at	
6	that this was an error. These should not have	6	least this appears to be a bank account statement?	
7	been included, but were included in good faith by	7	A Yes. BBVA Compass is a bank, so I'll take	
8	the accounting team who thought that they were	8	your representation it's a statement.	
9	valid notes.	9	MR. MORRIS: All right. And if we	
10	Q Okay.	10	can just scroll down.	
11	A So	11	All right. Stop right there.	
12	MR. MORRIS: I move to strike	12	BY MR. MORRIS:	
13	everything other than the first portion of	13	Q Do you see that there's a reference on	
14		14	May 2nd to a 2.4-million-dollar transfer?	
	your answer that was responsive to my		•	
15	question.	15	A Ido.	
16	BY MR. MORRIS:	16	Q Okay. And is that consistent with your	
17	Q HCMFA does not dispute that it received	17	testimony just now that on May 2nd, Highland	
18	\$2.4 million from Highland on May 2nd, does it?	18	transferred \$2.4 million to HCMFA?	
19	A No.	19	A That's correct.	
20	Q HCMFA does not dispute that it received	20	Q And lower on the page, the statement shows	
21	\$5 million on May 3rd, 2019, does it?	21	a transfer of \$5 million on May 3rd; correct?	
22	A No.	22	A Yes.	
23	Q Let's just confirm that, if we can.	23	Q And that's the payment that HCMFA	
24	MR. MORRIS: Can we put on the	24	acknowledged – acknowledges receiving from	
25	screen a document that's been marked as	25	Highland on that day; correct?	
_	Page 52	1	Dustin Namin	Page 53
1	Dustin Norris	1	Dustin Norris	
2	A Is this HCMFA's bank statement or is this	2	So my understanding of the company's	
3	HCMLP's?	3	position is that and and it may be helpful	
4	Q No. It's HCMLP's.	4	to provide some additional color leading up to the	
5	A Okay. It just says "Highland Capital	5	accounting. I don't know if we want to address	
6	Management," and I'm assuming it lines up I'm	6	that later in our affirmative defenses, if you	
	assuming this is the transfer, but	_	harrie a marfanana a thana	
8	-		have a preference there.	
_	Q Okay.	8	Q I'd just like you to maybe it's my	
9	Q Okay. A – I can't confirm an entity. But we're	8 9	Q I'd just like you to maybe it's my question, but I just want you to focus on my	
9	Q Okay. A — I can't confirm an entity. But we're not denying that there was cash received those	8 9 10	Q I'd just like you to maybe it's my question, but I just want you to focus on my question.	
10 11	Q Okay. A — I can't confirm an entity. But we're not denying that there was cash received those dates from HCMLP.	8 9 10 11	Q I'd just like you to maybe it's my question, but I just want you to focus on my question. A Uh-huh.	
10 11 12	Q Okay. A — I can't confirm an entity. But we're not denying that there was cash received those dates from HCMLP. Q Okay. And are you aware —	8 9 10	Q I'd just like you to maybe it's my question, but I just want you to focus on my question. A Uh-huh. Q And that is: First, do you know how HCMFA	
10 11 12 13	Q Okay. A — I can't confirm an entity. But we're not denying that there was cash received those dates from HCMLP.	8 9 10 11	Q I'd just like you to maybe it's my question, but I just want you to focus on my question. A Uh-huh. Q And that is: First, do you know how HCMFA accounted for these two payments in its books and	
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10 11 12 13 14	Q Okay. A — I can't confirm an entity. But we're not denying that there was cash received those dates from HCMLP. Q Okay. And are you aware — MR. MORRIS: We can take this down now. BY MR. MORRIS: Q Do you recall that Topic Number 10 asks	8 9 10 11 12 13 14	Q I'd just like you to maybe it's my question, but I just want you to focus on my question. A Uh-huh. Q And that is: First, do you know how HCMFA accounted for these two payments in its books and records? A Yeah. So the HCMLP employees who were tasked with creating books and records of the	
10 11 12 13 14 15	Q Okay. A — I can't confirm an entity. But we're not denying that there was cash received those dates from HCMLP. Q Okay. And are you aware — MR. MORRIS: We can take this down now. BY MR. MORRIS:	8 9 10 11 12 13 14 15	Q I'd just like you to maybe it's my question, but I just want you to focus on my question. A Uh-huh. Q And that is: First, do you know how HCMFA accounted for these two payments in its books and records? A Yeah. So the HCMLP employees who were tasked with creating books and records of the adviser, the accounting team recorded, we we	
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10 11 12 13 14 15 16 17	Q Okay. A — I can't confirm an entity. But we're not denying that there was cash received those dates from HCMLP. Q Okay. And are you aware — MR. MORRIS: We can take this down now. BY MR. MORRIS: Q Do you recall that Topic Number 10 asks for a witness who can testify about the accounting	8 9 10 11 12 13 14 15 16 17	Q I'd just like you to maybe it's my question, but I just want you to focus on my question. A Uh-huh. Q And that is: First, do you know how HCMFA accounted for these two payments in its books and records? A Yeah. So the HCMLP employees who were tasked with creating books and records of the adviser, the accounting team recorded, we we	
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10 11 12 13 14 15 16 17 18	Q Okay. A — I can't confirm an entity. But we're not denying that there was cash received those dates from HCMLP. Q Okay. And are you aware — MR. MORRIS: We can take this down now. BY MR. MORRIS: Q Do you recall that Topic Number 10 asks for a witness who can testify about the accounting of these transfers? A Uh-huh. Yup.	8 9 10 11 12 13 14 15 16 17 18 19	Q I'd just like you to maybe it's my question, but I just want you to focus on my question. A Uh-huh. Q And that is: First, do you know how HCMFA accounted for these two payments in its books and records? A Yeah. So the HCMLP employees who were tasked with creating books and records of the adviser, the accounting team recorded, we we our position is that is an incorrect recording of a payable to HCMLP. And so there was a payable	
10 11 12 13 14 15 16 17 18 19 20	Q Okay. A — I can't confirm an entity. But we're not denying that there was cash received those dates from HCMLP. Q Okay. And are you aware — MR. MORRIS: We can take this down now. BY MR. MORRIS: Q Do you recall that Topic Number 10 asks for a witness who can testify about the accounting of these transfers? A Uh-huh. Yup. Q Are you prepared to testify on Topic	8 9 10 11 12 13 14 15 16 17 18 19 20	Q I'd just like you to maybe it's my question, but I just want you to focus on my question. A Uh-huh. Q And that is: First, do you know how HCMFA accounted for these two payments in its books and records? A Yeah. So the HCMLP employees who were tasked with creating books and records of the adviser, the accounting team recorded, we we our position is that is an incorrect recording of a payable to HCMLP. And so there was a payable booked on the balance sheet of HCMFA by the HCMLP	
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1 Dustin Norris	Page 54	1	Dustin Norris	Page 55
2 commentary. Your counsel can ask those questions		2	A So my understanding is the audited	
3 or if it's responsive to a question. I'm just			financials recorded in a subsequent event you	
4 asking a very simple question.			showed me that they recorded a subsequent	
5 A Yup.			event. The balance sheet as of 12/31/2018 wasn't	
6 Q How how did HCMFA record these payments			amended because it was a subsequent event. But on	
7 on its books and records?			their books and records at that time, or	
8 A Yeah. My understanding is they recorded a			subsequent to that, they recorded a liability.	
9 payable to HCMLP, a liability.		9	Q And and do you know if that liability	
10 Q And do you know when HCMFA first		10	was recorded contemporaneously in May of 2019?	
11 discovered that the payments were booked on its		11	A I don't know.	
12 books and records as a liability?		12	Q But it's it's HCMFA's position that,	
13 A Our position is that that was revealed		13	notwithstanding the recording of the liability on	
14 through after the – sorry – after the demand.		14	it's books and records, that HCMFA didn't learn of	
			that fact until after the demand letter was sent	
15 And as we began to get additional information –		15 16	in December of 2020.	
particularly, and I would refer you toMr. Sauter's declaration, our amended response,		17		
•			Do I have that right? A Correct.	
18 and our second amended response that was filed		18 19	A Correct. Q Okay. Have there been any changes in	
19 yesterday regarding each of those time periods.20 But it was after the demand we found out how it			HCMFA's books and records since it learned of the	
		20		
		21	promise of the existence of the promise	
22 Q Okay. So just to simplify this: HCMFA's		22	withdrawn.	
23 books and records recorded the transfers on		23	Has has HCMFA changed its books and	
24 May 2nd and May 3rd as liabilities from HCMFA to		24	records after learning that the payments were	
25 Highland; correct?		25	recorded as liabilities?	
1 Dustin Norris	Page 56		Dustin Norris	Page 57
		1		
		1		
2 A I'm not aware of how it's been treated		2	entries have been done since then, but - yeah,	
2 A I'm not aware of how it's been treated3 since then.		2	entries have been done since then, but yeah, I'm not aware.	
 2 A I'm not aware of how it's been treated 3 since then. 4 Q Okay. 		2 3 4	entries have been done since then, but yeah, I'm not aware. Q Okay. But you'll you'll agree that the	
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 2 A I'm not aware of how it's been treated 3 since then. 4 Q Okay. 5 MR. RUKAVINA: And, John, no 6 urgency, but find some time in the near 7 future for the restroom break. The 		2 3 4 5 6 7	entries have been done since then, but – yeah, I'm not aware. Q Okay. But you'll – you'll agree that the accounting for these two payments was among the 30(b)(6) topics, correct, Number 11 – Number 10? A Yes.	
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	2 A Yes. We record liabilities on the balance
2 on any audit needs.3 Q Does HCMFA maintain an accounts payable	3 sheet.
4 ledger?	4 Q Okay. Did HCMFA complete its audit for
5 A I'm sure it does.	5 2019?
6 Q Did you do anything to try to ascertain	6 A I don't not that I'm aware of. I don't
7 whether or not these notes appear as liabilities	7 believe they had an audit for 2019.
8 on the accounts payable ledger?	8 Q Okay. Now, HCMFA contends that the
9 A As current accounts payable ledger?	9 payments were should not have been booked as a
10 Q Yeah.	10 loan because they were supposed to be compensation
11 A No.	11 for the error that Highland made in connection
12 Q Did you other than the audited	12 with the NAV error; correct?
13 financial statements, did you take any steps to	13 A Correct.
14 ascertain how these payments were recorded in	14 Q Okay. Did HCMFA ever issue an invoice or
	·
15 HCMFA's books and records, or is or is it only16 on the audited financial statements?	15 a bill of any kind to Highland?16 A Not that I'm aware of.
17 A So at the time that they were recorded, we18 know they were recorded as liabilities on the	17 Q Okay. Is there anything in HCMFA's books18 and records that reflects its position that the
	·
	19 payments should not have been billed as
	20 liabilities, but they should have been billed as
21 liability in the books and records, where in the	21 income?
22 books and records was it recorded as a liability?	22 A As compensation?
23 A Meaning on the balance sheet?	23 Q Yeah.
24 Q Okay. So the balance sheet is one place;	24 A Yes.
25 is that right?	25 Anything in their records?
D-	
	age 60 Page 61
1 Dustin Norris	1 Dustin Norris
1 Dustin Norris 2 Q Yes.	Dustin Norrispayments were supposed to be made as compensation
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_	Director Manufa	Page 62		Direction Manuals	Page 63
1	Dustin Norris		1	Dustin Norris	
2	MR. MORRIS: Okay. I move to			I'm still on 30(b)(6) Topic Number 10.	
3	strike.		3	Is there anything in HCMFA's books and	
4	BY MR. MORRIS:		4	records that was created before the answer date	
5	Q And listen carefully to my question.		5	that shows that the payment should have been	
6	Is HCMFA aware of anything that was		6	accounted for as compensation rather than as a	
/	created prior to the answer date that corroborates		7	loan?	
8	its position today that the payments were intended		8	A As far as an accounting record, I wouldn't	
9	to be treated as compensation rather than a loan?		9	expect there to be, because the accountant	
10	A I – I think as far as books and records		10	function was outsourced to HCMLP, and and I	
11	go, we have NAV error memos, we have communication		11	would refer you to our latest response and our	
12	with the SEC. Right?		12	amended response of – of what was discovered and	
13	There's there is a lot of		13	found throughout the process here.	
14	information related to the services that were		14	The accountants recorded a liability	
15	performed under the shared services agreement,		15	and they thought it should be liability. And so,	
16	were for valuation purposes that Highland had		16	no, there wasn't anything, to my knowledge, prior	
17	created and was responsible for the valuation		17	to that that was in the accounting books and	
18	process, and that is a host of documents that are		18	records. And I you know, I'm not surprised	
19	in the record, yes.		19	there wasn't, because of the facts that you'll	
20	MR. MORRIS: Okay. I I move to		20	you'll see in our amended answers.	
21	strike.		21	Q Okay. Do you know whether, if it was	
22	BY MR. MORRIS:		22	intended to be compensation, that HCMFA's income	
23	Q I'm asking about accounting. Maybe it's		23	statement should have shown the inflow of the	
24	my fault. Okay? I'll I'll take responsibility		24	\$7.4 million?	
25	for this. I'm asking as a matter of accounting.		25	A I don't know how it would be reported for	
1	Dustin Norris	Page 64	1	Dustin Norris	Page 65
2			Ė		
2	accounting purposes. I – I do have an accounting background, but I haven't done accounting in a		2	A Yes, that's correct. The accounting function was outsourced to HCMLP.	
3	long time, and I'm not an expert in adviser				
4 5	financial statements. So I would say I don't		4 5	Q Okay. And there's was there anybody was there any officer of HCMFA who had	
6	•		5	responsibility for reviewing HCMFA's balance	
7	have and I guess I guess that stepping back and answering on behalf of the company here,		7	sheet?	
Ω			1	A I believe I already answered this earlier.	
8	I don't have a knowledge of how that would be		Ω		
	recorded for income statement purposes		8	•	
9	recorded for income statement purposes.		9	Q I actually asked the question on the	
10	Q Okay.		9 10	Q I actually asked the question on the audited financial statements.	
10 11	Q Okay. A But it would – it would be compensation		9 10 11	Q I actually asked the question on the audited financial statements. A Okay.	
10 11 12	Q Okay. A But it would – it would be compensation that would be reported –		9 10 11 12	 Q I actually asked the question on the audited financial statements. A Okay. Q Now I'm going to ask specifically. Is 	
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1	Dustin Norris	Page 66	1	Dustin Norris	Page 6
_	A Yes, I do.			A Correct.	
	Q Okay. HCMFA is a financial advisory firm;			Q And can we refer to the boards that manage	
	correct?			ne funds that are served by the advisers as "the	
	A It is.			etail board"?	
_	Q And it provides advisory services to			A Yes.	
	certain funds; correct?		•	Q Okay. Did you participate are you	
	A It does.			ware that in the fall of 2020 the retail board	
	Q And those advisory services are provided			conducted a review in connection with the	
	·			determination as to whether or not to renew	
	pursuant to written agreements; correct?		-		
11	A They are.			HCMFA's contracts?	
12	Q And those agreements are subject to annual			A I am aware, yes.	
	review; correct?			Q Did you participate in that process?	
	A They are.			A I did, in some – in some parts, yes.	
15	Q And those agreements the principal source			Q What parts did you participate in?	
	of HCMFA's revenue?		16	A Yeah, so I attended the board meetings in	
17	A Yes, I believe so.			relation to we call this the 15(c) analysis.	
18	Q Okay. It's among the most important			And so it's Section 15(c) of the 1940 Act requires	
	contracts HCMFA has; correct?		-	the board to determine and renew the contracts on	
20	A Yes.			an annual basis. And so they look at a number of	
21	Q In fact, it's the reason for HCMFA's			factors. And there's, I believe, certain case law	
22	existence, is that fair, is to serve the funds?		22	hat dictates the things that they should look at:	
23	A Largely, yes.		23	Quality of services, performance, fees.	
24	Q And the funds are managed by boards;		24	And so my aspect the biggest part	
25	correct?		25	of my contribution is to talk about the	
1	Dustin Norris	Page 68	1	Dustin Norris	Page 6
ı ص			-		
	performance of the funds, how they performed			part, this process is managed and run by the HCMLP	
	during the year. We hire an outside third party			employees as part of that shared services. Legal	
	to come in and talk about performance and fees. I			and compliance help draft the memos. They are	
	nelp provide insight, talk about as I oversee			Q And I'm going to interrupt you, and I	
	the sales and business development of the firm, I			eally apologize for doing that. I'm not asking	
	ralk about inflows and outflows, which help			about HCMLP.	
	nelps impact the economies of scale funds. We		-	A Yeah.	
	nave certain funds that are shrinking, some that		-	Q These are these are HCMFA's contracts;	
	are growing. So talking about future, talking			correct?	
	about mergers, talking about different aspects of		11	A They are.	
	that.			Q And they're the most important contracts	
13	And so my mine is more of the sales			hat HCMFA has; correct?	
	business development function and regarding the		14	A Correct.	
1 =			15	Q Okay. So who which officers of HCMFA	
	services. One of the things that we do as the				
	services. One of the things that we do as the adviser is we, again they have to determine			are involved in the 15(c) analysis?	
16	•			are involved in the 15(c) analysis? A Yeah, one going back to to clarify	
16 17	adviser is we, again they have to determine		16 17		
16 17 18	adviser is we, again they have to determine that the quality of services we're providing are		16 17 18	A Yeah, one going back to to clarify	
16 17 18 19	adviser is we, again they have to determine that the quality of services we're providing are sufficient, and so they have to get comfortable		16 17 18 19	A Yeah, one going back to to clarify on your you know, this is the most important	
16 17 18 19 20	adviser is we, again they have to determine that the quality of services we're providing are sufficient, and so they have to get comfortable with the various functions.		16 17 18 19 20	A Yeah, one going back to to clarify on your you know, this is the most important thing, you know, that we have, it is, and as such	
16 17 18 19 20 21	adviser is we, again they have to determine that the quality of services we're providing are sufficient, and so they have to get comfortable with the various functions. Q Okay. Who else on behalf of HCMFA		16 17 18 19 20 21	A Yeah, one going back to to clarify on your you know, this is the most important thing, you know, that we have, it is, and as such we have a lot of those functions, and to talk	
16 17 18 19 20 21	adviser is we, again they have to determine that the quality of services we're providing are sufficient, and so they have to get comfortable with the various functions. Q Okay. Who else on behalf of HCMFA participated in the 15(c) analysis that you've just described?		16 17 18 19 20 21 22	A Yeah, one going back to to clarify on your you know, this is the most important thing, you know, that we have, it is, and as such we have a lot of those functions, and to talk about HCMFA's role, we have front-office nvestment professionals who join those meetings	
16 17 18 19 20 21 22 23	adviser is we, again they have to determine that the quality of services we're providing are sufficient, and so they have to get comfortable with the various functions. Q Okay. Who else on behalf of HCMFA participated in the 15(c) analysis that you've just described?		16 17 18 19 20 21 22 23	A Yeah, one going back to to clarify on your you know, this is the most important thing, you know, that we have, it is, and as such we have a lot of those functions, and to talk about HCMFA's role, we have front-office	

1	Dustin Norris	Page 70	1	Dustin Norris	Page 71
1				correct?	
Ι.	the investment selection. And then we bring in				
3	HCMLP to provide the various other services. And		3	A Not that I'm aware of. If you have	
4	so they are a huge part of that. To say that -			something you could you know, a document or	
5	yeah, it's not they are legal, compliance,			something that you're thinking of?	
b	accounting, finance, back office, settlement.		6	Q So you participated in the 15(c) process,	
′	Those are all functions that they're providing.			and you have no knowledge of HCMFA informing the	
8	Q I know I appreciate that they're			retail board of the existence of the notes?	
9	functions that they play under the shared services		9	A Of these notes? No. And I would say that	
10	agreement.		10	there was a question from the retail board posed	
11	A Yup.		11	to the advisers, which we passed along to HCMLP,	
12	Q Let me let me move on.		12	which included Lauren Thedford as an HCMLP	
13	A Okay. Go ahead.		13	employee and Frank Waterhouse, is: Were there any	
14	Q In October 2020, HCMFA informed the retail		14	liabilities to owed to Highland?	
15	board that HCMFA was obligated to pay Highland the		15	Q So let's take a look I'm sorry. Go	
16	outstanding principal amount due under the notes;		16	ahead.	
17	correct?		17	A No, go ahead.	
18	MR. RUKAVINA: Objection; form.		18	Q I was going to say, let's take a look at	
19	THE WITNESS: Yeah, the		19	that.	
20	obligated I would sorry. Can you		20	MR. MORRIS: So if we could put up	
21	ask the question again?		21	on the screen Exhibit 59.	
22	BY MR. MORRIS:		22	(Exhibit 59 tendered.)	
23	Q Sure.		23	BY MR. MORRIS:	
24	In October 2020, HCMFA informed the		24	Q Have you seen this document before, sir?	
25	retail board of the existence of the notes;		25	A I have.	
		Page 72			Page 73
1	Dustin Norris		1	Dustin Norris	
2	Q And this is the report that the advisers		2	A I don't know.	
3	gave to the retail board in October 2020 as part		3	Q Did anybody on behalf of the advisers ever	
4	of the 15(c) analysis; correct?			suggest that this memo was wrong or inaccurate in	
5	A Yes, working closely with HCMLP in the		5	any way to the best of your knowledge?	
6	accounting, compliance, and legal function did				
7			6	A At that time? Is that what you mean?	
8	draft this.		6 7	Q Yes.	
0	draft this. Q Okay. And who who on behalf of the		6 7 8	Q Yes. A No, not not to my knowledge.	
9	draft this. Q Okay. And who who on behalf of the advisers authorized the sending of this memo?		6 7 8 9	Q Yes. A No, not not to my knowledge. Q Okay. When did you see this memo for the	
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1 Dustin Norris	Page 74	1	Dustin Norris	Page 75
2 that this email is being sent to and from;			employee of HCMFA have any responsibility to make	
3 correct?			sure that this memo was true and accurate before	
4 A I'm looking at the entities.			it was sent to the retail board?	
5 I'm executive vice president of most		5	A Lauren Thedford was the secretary of the	
6 of the entities.			advisers and the funds, and I believe this has to	
7 Q Okay. You're the executive vice president			do with and depending on the material, I think	
8 of each of the entities that are sending this			this has to do with the note, and other things.	
9 memo; correct?			So the finance team, Frank Waterhouse and his team	
10 A No. Not NexPoint Securities.		10	at HCMLP, would have been supplying those answers.	
11 Q I appreciate that. Thank you for the		11	Q Okay. And why do you keep saying Frank	
12 clarification.		12	Waterhouse at HCMLP instead of Frank Waterhouse as	
13 Did you review this before it was		13	the treasurer of the entity that's sending this	
14 sent?			memo?	
15 A I don't remember.		15	A Because Frank was the CFO of Highland who	
16 Q Did you take any steps to make sure that		16	was responsible for the accounting, finance,	
17 it was accurate?		17	back-office functions of these funds. And the	
18 A Probably not. And that wouldn't have been			answer the adviser did not have that	
19 my function. We had a legal and compliance team		19	information, and intentionally hired HCMLP to	
20 that was – through the shared services agreement		20	provide that function. And so that is how it was	
21 that prepared memos. This is going to the board.		21	viewed. Those were HCMLP employees, and that was	
22 That would have all obviously gone through legal	1.		under the shared services agreement.	
23 and compliance. It wouldn't have been my		23	Q Is it your testimony as the HCMFA 30(b)(6)	
24 function.		23 24	witness that Frank Waterhouse did not have any	
		25	responsibility in his capacity as the treasurer of	
25 Q Did anybody who served as an officer or		20	responsibility in this capacity as the treasurer or	
1 Dustin Norris	Page 76	1	Dustin Norris	Page 77
2 HCMFA to make sure that this report was true and		2	A I don't know for sure, but I highly doubt.	
3 accurate before it was sent to the retail board?		3	He was never, to my knowledge, involved in	
4 A I don't know of any function or			drafting or reviewing 15(c) memos.	
•				
5 requirement of his role as treasurer of HCMFA that		5	Q Okay. You'll agree that this memo was	
		5		
6 he was responsible for reviewing 15(c) memos prior		5 6	sent by the advisers in response to the retail	
6 he was responsible for reviewing 15(c) memos prior 7 to going to the board.		5 6 7	sent by the advisers in response to the retail board's questions; correct?	
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1	P Dustin Norris	age 78	Dustin Norris	Page 79
2	Q Okay.	2		
3	MR. MORRIS: Can we scroll down to	3		
4	Question 2, please?		DV/14D 140DD10	
5	BY MR. MORRIS:	5		
6	Q Have you seen Question 2 before?	6		
7	A Yes.	-	' \$12.286 million number includes the principal	
8	Q Do you have an understanding of what was	8		
_	•			
9	being requested by the retail board in Question Number 2?	9		
10		10		
11	A Yes. They are asking for amounts	1		
12	currently payable or due in the future to HCMLP by	11	, ,	
13	HCMFA or NexPoint Advisors.	13		
14	Q And and did the advisers report to the	14		
15	retail board in October 2020 that, quote,	1:		
16	"\$12,286,000 remains outstanding to HCMLP from	10	, , , ,	
17	HCMFA"?	1		
18	A It says it right there. That's in the	11	,	
19	memo.	19	,	
20	Q Okay.	20		
21	A And I would note that came from Frank	2	<u> </u>	
22	Waterhouse and his team, that information, the	2:	•	
23	accounting department at HCMLP.	23	, , ,	
24	MR. MORRIS: Okay. I move to	2		
25	strike everything after the portion of	2	5 know 600 pages. So if it's in there and you	
1	P Dustin Norris	age 80	Dustin Norris	Page 81
2		ـ ا		
2	can point to it, then I can take your representation. But I don't remember that.	2	. IOOK at the email chain, it didn't look too	
3		2	avtancina And if you are look at this hale	
4	•	3		
5	Q All right. So did anybody acting on	4	saying that the earliest the note between HCMLP	
5	Q All right. So did anybody acting on behalf of HCMFA withdrawn.	5	saying that the earliest the note between HCMLP and HCMFA can come due is May 21st. He himself	
5 6	Q All right. So did anybody acting on behalf of HCMFA withdrawn. Did any officer of or employee of	5	saying that the earliest the note between HCMLP and HCMFA can come due is May 21st. He himself seems to be confused here, because as we found out	
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6 7 8	Q All right. So did anybody acting on behalf of HCMFA withdrawn. Did any officer of or employee of HCMFA do anything to make sure the information in this response was true and accurate before it was	5 6 7	saying that the earliest the note between HCMLP and HCMFA can come due is May 21st. He himself seems to be confused here, because as we found out through discovery and in the testimony of what has come out, there was an agreement – that was a	
6 7 8 9	Q All right. So did anybody acting on behalf of HCMFA withdrawn. Did any officer of or employee of HCMFA do anything to make sure the information in this response was true and accurate before it was sent to the retail board?	5 6 7	saying that the earliest the note between HCMLP and HCMFA can come due is May 21st. He himself seems to be confused here, because as we found out through discovery and in the testimony of what has come out, there was an agreement — that was a separate agreement. That wasn't related to the	
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1 Dustin Norris	Page 82 1 Dustin Norris	Page 83
2 have this information. That's that's where we	2 and what is owing. We don't have information on	
3 would get this information.	3 the other notes. So discussed it with counsel,	
4 Q Okay. Thank you.	4 but I we don't have any backup to support or	
5 MR. RUKAVINA: Hey, John, let me	5 Q Did you make did you make any attempt	
6 just interject for a little. Let's go off	6 to speak with Ms. Thedford?	
7 the record for just a minute.	7 A No, I didn't. And she wouldn't have that	
8 (Discussion off the record.)	8 information. She's an attorney and was involved	
9 BY MR. MORRIS:	9 in the legal field, and she's no longer employed	
10 Q Do you know, as HCMFA's 30(b)(6)	10 there or at Skyview.	
11 representative, whether the \$12.286 million	11 MR. MORRIS: I move to strike.	
12 includes the \$7.5 million withdrawn.	12 BY MR. MORRIS:	
13 Do you know if the 12. – withdrawn.	13 Q Okay. And so you don't know what the	
14 As HCMFA's 30(b)(6) witness, do you	14 component parts of this \$12.286 million number	
15 know whether the \$12.286 million referenced in	15 are; correct?	
16 Response Number 2 includes the \$7.4 million in	16 A I don't.	
17 principal amount on the notes?	17 Q Okay. Do you see the last sentence of	
18 A I don't.	18 this response that says, quote: "The adviser	
19 Q Okay. Did you do anything to try to	19 notes that both entities have the full faith and	
20 answer that question before appearing for today's	20 support of Jim Dondero," close quote?	
21 deposition?	21 A Ido.	
22 A Yeah. We discussed this with counsel. We	22 Q Do you know what that means?	
23 don't have underlying backup. We couldn't talk to	23 A Other than what Frank Waterhouse	
24 Frank Waterhouse on this in preparation, but the	24 testified and I, again, refer you to his	
25 numbers just don't match up to principal amounts	25 deposition that I believe that wording came	
1 Dustin Norris	Page 84 1 Dustin Norris	Page 85
2 from him, and he emailed that. So I would refer	2 A I'm not aware, and if you look at Frank's	
3 you to his testimony.	3 testimony, I believe he testified that he he	
4 Q Well, as the 30(b)(6) witness, you were	4 didn't have that authority either, but I'm not	
5 asked to be prepared about communications to the	5 sure. I would refer you to his I don't have	
6 retail board; correct?	6 any other knowledge.	
7 A Yes.	7 Q Okay. So it's HCMFA's position that the	
8 Q Okay. Did you do anything to try to	8 statement in the last sentence of Response	
	o diatornont in the last contained on temperate	
	9 Number 2 was unauthorized. Do I have that	
9 figure out what that sentence meant that	9 Number 2 was unauthorized. Do I have that	
9 figure out what that sentence meant that 10 sentence meant, other than reading Frank	·	
 9 figure out what that sentence meant that 10 sentence meant, other than reading Frank 11 Waterhouse's deposition transcript? 	9 Number 2 was unauthorized. Do I have that10 correctly?11 A I don't know that we're taking that	
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9 figure out what that sentence meant — that 10 sentence meant, other than reading Frank 11 Waterhouse's deposition transcript? 12 A Knowing that it came from Frank, and Frank 13 elaborated, I didn't do any additional research. 14 Q Did you ask Mr. Dondero if he was aware 15 that that statement was included in the report to 16 the retail board? 17 A I did not. 18 Q Do you know why this statement was 19 included in the report to the retail board? 20 A I could speculate, but I don't know 21 specifically.	 9 Number 2 was unauthorized. Do I have that 10 correctly? 11 A I don't know that we're taking that 12 position either way. It wasn't something 13 that that we're was even part of the our 14 arguments. 15 Q I'm not asking if it's part of your 16 arguments. I'm just asking you, as a factual 17 matter, does HCMFA contend that that sentence was 18 included without authorization? 19 A I don't have the knowledge of that. 20 That's I'm not going to contend that. 21 Q Okay. 	

1 Dustin Norris	Page 86 Dustin Norris	Page 87
1 Dustin Norris 2 MR. MORRIS: If we can go back to	1 Dustin Norris 2 meeting as part of the 15(c) process, but I	
1		
'	3 don't know if you have that in hand, but I believe4 that was supplied. I'm not certain. Sometimes it	
4 THE WITNESS: Yup.		
5 BY MR. MORRIS:	5 was 12/31 balance sheets, sometimes it was a	
6 Q Okay. Has have the advisers ever told	6 June 30th balance sheet.	
7 the retail board that the response to Question	7 Q Okay. Can we – are you aware – have you	
8 Number 2 was inaccurate in any way?	8 seen an email exchange that preceded the the	
9 A Specifically saying, "Hey, let me tell you	9 finalization of this memo to the retail board?	
10 this memo, Question 2, let me go back, it was	10 A I believe it was part of your exhibits.	
11 inaccurate," no, that was never a specific	11 Q All right.	
12 disclosure of the retail board.	12 MR. MORRIS: So let's put that up	
However, the retail board is aware of	on the screen, Exhibit 36.	
14 all of the facts and circumstances surrounding the	14 (Exhibit 36 tendered.)	
15 notes, and so they're aware of our position.	15 BY MR. MORRIS:	
16 They're aware of they've been demanded.	16 Q So is this the document that you've seen	
17 There's been a lawsuit involved on both notes.	17 before?	
18 And and but, no, this specific	18 A Yes.	
19 Number 2 is incorrect, no. But they're aware of	19 Q Okay.	
20 our position and what we found out since then.	20 MR. MORRIS: And can we start at	
21 Q Okay. Earlier in 2020, before this memo	21 the bottom of the document?	
22 was sent to the retail board, HCMFA had provided	22 BY MR. MORRIS:	
23 to the retail board its financial statements for	23 Q Okay. And do you know who Stacy from	
24 the period ending June 30, 2020; correct?	24 Blank Rome is?	
25 A I believe that's typical in our August	25 A I do.	
	Page 88	Page 89
1 Dustin Norris	1 Dustin Norris	
1 Dustin Norris 2 Q And who is that?	Dustin Norrisall of them. I don't know if you have the memo.	
2 Q And who is that?	2 all of them. I don't know if you have the memo.	
2 Q And who is that? 3 A She is independent counsel for the retail	2 all of them. I don't know if you have the memo.3 If you represent that is all the questions,	
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Pag 1 Dustin Norris	age 90 Page 91 Page 91
2 retail board's outside counsel?	2 would go to them as the source for that
3 A Just one correction there. She forwarded	3 information.
4 it to Mr. Surgent and copied me.	4 Q Okay.
5 Q Fair enough.	5 MR. MORRIS: And let's scroll up
6 A I'm not on the "To" line. That would	6 and see the response.
7 be	7 BY MR. MORRIS:
8 MR. MORRIS: Let's scroll down,	8 Q And do you see Mr. Waterhouse responded
9 please. Let's scroll.	9 with one word: "Yes"?
10 BY MR. MORRIS:	10 A Yes, I see that.
11 Q And then and then she forwards it	11 Q And then Ms. Thedford asked if
12 further to Mr. Waterhouse, Mr. Klos, and	12 Mr. Waterhouse could provide the amounts.
13 Ms. Hendrix.	13 Do you see that?
14 Do you see that?	14 A I do.
15 A I do.	15 Q And you're still copied on this email
16 Q And you're still copied on it; correct?	16 chain; correct?
17 A lam.	17 A lam.
18 Q And do you see that she's asking Frank,	18 Q So
19 Mr. Klos, and Kristin to respond to Question	19 A Which, again, is not unusual to copy me on
20 Number 2 that concerns material outstanding	20 some things I wish they wouldn't. But I was
21 amounts currently payable or due in the future to	21 copied on board items fairly regularly.
22 Highland or its affiliates by either of the	22 MR. MORRIS: Okay. I move to
23 advisers?	23 strike.
24 A Yes, it HCMLP will take that as a typo.	24 BY MR. MORRIS:
25 But yes. And that would be standard. Lauren	25 Q I appreciate your wishes, but the question
Pa	age 92 Page 93
1 Dustin Norris	1 Dustin Norris
 Dustin Norris was simply whether or not, you know, you would 	1 Dustin Norris 2 Okay.
 Dustin Norris was simply whether or not, you know, you would acknowledge that you were copied on this email. 	 Dustin Norris Okay. A "Are there material outstanding amounts
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Pi	2 financials. And, again, to correct to me, I'm 3 CC'd. It's a nuance, but she's representing to 4 Frank and Dave and Kristin with a CC to me. 5 Q Okay. Does HCMFA acknowledge that the 6 information contained in the October 23rd, 2020, 7 report to the retail board with respect to 8 Question Number 2 was derived from HCMFA's 9 June 30th, 2020, financials? 10 A Sorry. One more time? 11 Q Will you agree, as HCMFA's 30(b)(6) 12 witness, that the information provided to the 13 retail board in October 2020 in response to 14 Question Number 2 was taken directly from HCMFA's 15 financial statements for the period ending 16 June 30th, 2020? 17 A Yeah. The unaudited financials, yes. 18 Q Okay. And so so as HCMFA's 30(b)(6) 19 witness, you will agree that the \$12,286,000 20 figure that was included in the former response to 21 the retail board was obtained from HCMFA's 22 unaudited financial statements for the period 23 ending June 30th, 2020; correct? 24 A It appears that way. 25 And I - I think - and, again, we're

1 Dustin Norris	Page 98	1	Dustin Norris	Page 99
2 I'm aware of.			full faith and backing."	
3 Q Okay.		3	So I don't know the exact board	
4 A And – and would we have reason to doubt			meeting. However, we do have an August board	
5 him? This he was the source of the			meeting related to 15(c). There's typically an	
6 information.			n-person or telephonic meeting in August, and	
7 Q Okay. And do you see that the last			hen there's a September board meeting that is	
8 sentence of his email actually refers to the last			devoted almost exclusively to the 15(c) process.	
9 sentence of Response Number 2 that was given to		9	And after that, there is follow-up	
of the retail board later in October 2020?			meetings – multiple sometimes, particularly in	
			2020 during the bankruptcy proceedings that	
12 Q Did you ever ask Mr. Waterhouse anything			where the board was getting comfortable. So it	
3 about that last sentence?	1.		would have been one of those meetings, but I don't know which one.	
14 A I don't believe so.				
15 Q Do you see that he says, quote: "The		15 16	Q And and did you personally participate	
16 response should include, as I covered in the board			in a board meeting where Mr. Waterhouse covered	
17 meeting, that both entities have the full faith			the topic of the advisers having the full faith	
18 and backing from Jim Dondero, and to my knowledge			and backing from Mr. Dondero?	
19 that hasn't changed"?			A I – I probably would have been in most or	
20 Do you see that?			all of those board meetings, but I don't remember	
21 A Ido.			that specifically.	
22 Q Do you know what board meeting he's		22	Q Okay. Do you know do you know whether	
23 referring to?			anybody who's copied on this email ever questioned	
24 A "The response should include, as I covered			any aspect of the last sentence of	
in the board meeting, that both entities have a	2	25	Mr. Waterhouse's email at any time prior to the	
1 Dustin Norris	Page 100	1	Dustin Norris	Page 10
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Page 1 Dustin Norris	
Dustin Norris backing is not provided. There's no footnotes.	1 Dustin Norris 2 (Recess from 12:11 p.m. to 1:06 p.m. CST)
3 It's just a number that says due to HCMLP.	3 BY MR. MORRIS:
4 Q Do you know do you know do you have	4 Q Mr. Norris, Topic Number 9 relates to
5 any recollection as to the totality of HCMFA's	5 consent fees.
6 liabilities as of June 30th, 2020?	6 Do you understand that?
	7 A Ido.
7 A Including this note? Or just this note? 8 Q All all liabilities. What's the bottom	8 Q Do you have an understanding of what a
	9 "consent fee" is?
10 A I don't know. Do you have it? Do you	
11 want to pull it up? 12 Q I don't.	
	12 particular topic?13 A I did.
13 A Yeah, I don't remember. 14 MR. RUKAVINA: Hey, John, it's	
•••	
15 approaching 12:15. Just whenever, you	15 A I discussed the consent fee with
16 know MR MORRIS: Veeb Vou know what?	16 Mr. Dondero, with Mr. Rukavina, and with 17 Mr. Sauter.
MR. MORRIS: Yeah. You know what?	
18 I was just about to change topics, so this	18 Q Okay. Mr. Sauter has no personal
19 is a good time.	19 knowledge of any consent fee that was paid in the
MR. RUKAVINA: Okay.	20 spring of 2019; correct?
MR. MORRIS: Why don't we stop	21 A No.
here, and we'll come back at the top of	22 Q Okay. What's your understanding of what a
23 the hour.	23 "consent fee" is?
24 MR. RUKAVINA: Excellent. Thank	24 A Generally or the specific consent fee
25 you.	25 in that
Page	
1 Dustin Norris	1 Dustin Norris
2 Q Let's start generally.	2 A Yeah. So the consent fee was related to
 3 A Yeah. So a "consent fee" is a fee paid to 4 a paid to someone who's agreeing to amend terms 	3 the global allocation fund that converted from an
4 a paid to someone who's adreeing to amend terms	1 1 amana amalifi walita a alaasal amalifi wali amalifi ama
	4 open-end fund to a closed-end fund, and there was
5 or change the structure of the of a document or	5 a 3 percent fee that would be paid to investors
5 or change the structure of the of a document or 6 a loan. In in bank loan world, or loan world,	5 a 3 percent fee that would be paid to investors6 that, one, consented to the conversion from an
 or change the structure of the of a document or a loan. In in bank loan world, or loan world, if you are going to amend or extend or change the 	 5 a 3 percent fee that would be paid to investors 6 that, one, consented to the conversion from an 7 open-end fund to a closed-end fund, but also held
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or change the structure of the of a document or a loan. In in bank loan world, or loan world, if you are going to amend or extend or change the terms, typically there was a consent fee paid to those willing to consent. Those that have voted or consented	 5 a 3 percent fee that would be paid to investors 6 that, one, consented to the conversion from an 7 open-end fund to a closed-end fund, but also held 8 their investment through the conversion. 9 The conversion was finalized in 10 February of 2019, and the consent fee was an
or change the structure of the of a document or a loan. In in bank loan world, or loan world, if you are going to amend or extend or change the terms, typically there was a consent fee paid to those willing to consent. Those that have voted or consented receive a fee.	 5 a 3 percent fee that would be paid to investors 6 that, one, consented to the conversion from an 7 open-end fund to a closed-end fund, but also held 8 their investment through the conversion. 9 The conversion was finalized in 10 February of 2019, and the consent fee was an 11 operational challenge because you had to determine
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Dustin Norris end fund, and it was submitted to z. It went through SEC review as a proxy ent, and it went out to shareholders who d to vote for the proposal. 1 Dustin Norris 2 determine what the likely total fee would be? 3 A Yeah. I'm sure they did. 4 Q Do you know what the total fee 5 paid what the total consent fee paid was?	
rs. It went through SEC review as a proxy and it went out to shareholders who 3 A Yeah. I'm sure they did. 4 Q Do you know what the total fee	
ent, and it went out to shareholders who 4 Q Do you know what the total fee	
to vote for the proposal.	
And who paid the consent fee? HCMFA? 6 A I don't have the exact amount, but it was	
My understanding is HCMFA as the adviser 7 over \$5 million.	
plobal allocation fund paid the consent fee 8 Q Okay. And over what period of time were	
stors. 9 the consent fees paid?	
And whose idea was it to seek consent to 10 A I know they were paid in May and June, and	
e from an open fund to a closed-end fund? 11 there may be a portion that were paid thereafter,	
- I would say it was collaborative of	
management. Jim Dondero, myself, legal 13 certain broker-dealers that reported later, and	
ance was involved. It was, you know, Mark 14 when those were reported and verified, they were	
a, who was a partner at the time. There was a 15 paid out. I don't remember the final date of the 15 last distribution.	
· · · · · · · · · · · · · · · · · · ·	
nt to change from an open-end fund to a 18 business. But were the consent fees paid to the -end fund, did HCMFA understand that there 19 fund's shareholders?	
be costs, fees, and expenses associated with 20 A They were paid to the shareholders.	
ecision? 21 That's correct.	
Being cost fees as in the consent fee? 22 Q Okay. Correct 23 A Their consented. The shareholders had to	
Correct. 23 A That's consented. The shareholders had to	
Yes. 24 vote, and they had to be a shareholder on	
And did it undertake any analysis to 25 conversion date.	
Page 108 Dustin Norris 1 Dustin Norris	Page 109
Dkay. And the decision to seek and obtain 2 A Yes.	
onay. And the decision to seek and obtain 2 A 1es. It, was that a voluntary decision by HCMFA? 3 Q And, in fact, it used approximately	
o seek consent to move to a closed-end 4 \$5 million of the moneys paid in May 2019 to pay	
5 the consent fee of approximately \$5 million; is	
lo O Okay Da yay kaay tha ayaat number?	
No. 8 Q Okay. Do you know the exact number?	
t's not something that any rule or 9 A Of the consent fee?	
t's not something that any rule or 9 A Of the consent fee? dy mandated; correct? 10 Q Withdrawn.	
t's not something that any rule or dy mandated; correct? 9 A Of the consent fee? 10 Q Withdrawn. 11 Do you have a better or more precise	
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1 Dustin Norris	Page 110	Dustin Norris	Page 111
2 during that time, a lot of discussions with			
3 TerreStar over the concerns of a valuation error	3		
4 in 2018 and '19.		the TerreStar	
5 Q And did it ultimately turn out that there	5		
6 was a valuation error involving TerreStar?	6		
7 A There was.	7		
8 Q Okay. And had HCMFA retained Houlihan	8	• •	
9 Lokey in connection with doing the TerreStar	9		
10 valuation?	10		
11 A Houlihan Lokey was involved in the	1		
12 valuation, yes.	1:		
•		·	
13 Q And who retained Houlihan Lokey? 14 A I don't know.	1;		
15 Q As you sit here right now, you can't tell	1:	,	
16 me who retained Houlihan Lokey? 17 A I don't know if it was HCMLP or HCMFA	10		
	1	•	
	11		
19 Q Okay. Are you familiar with the firm	1:	•	
20 Houlihan Lokey?	2		
21 A lam.	2	,	
22 Q And do you know what services they	2	1	
23 provided in connection with the TerreStar	2		
24 valuation?	2		
25 A I do.	2	5 Q Would you dispute that HCMFA is the entity	
1 Dustin Norris	Page 112	Dustin Norris	Page 113
2 that retained Houlihan Lokey?	2		
3 A I don't know.	3	Q Does HCMFA contend that Houlihan Lokey	
4 Q Would you agree that Houlihan Lokey is		made any mistakes in connection with its valuation	
o iainy described as an independent third-party	5		
0 1 4 10		services?	
6 valuation consultant?	5	s services? A I'm not sure.	
6 valuation consultant? 7 A Yes, generally.		s services? A I'm not sure. Q Does HCMFA have a position as to whether	
6 valuation consultant?7 A Yes, generally.8 Q Okay. And do you know when Houlihan Lokey	7	services? A I'm not sure. Q Does HCMFA have a position as to whether or not Houlihan Lokey made any mistakes in any of	
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4 Donath Nac 1	Page 114		Direction Names	Page 115
1 Dustin Norris	harmond other titude	1	Dustin Norris	
2 mistakes in connection with the	he work that it did	2	Q But HCMFA has not undertaken any analysis	
3 on the TerreStar valuation?			or investigation, to the best of your knowledge,	
4 A Sorry. One more time.			to try to determine if Houlihan Lokey was the	
5 Q Is HCMFA undertaking			responsible party; fair?	
6 investigation to try to determine	ne whether Houlihan	6	A We don't know if there is a contract or	
7 Lokey made any mistakes?			not. At this point, we're talking about the	
8 A There are I don't kno			defense of Highland's responsibility. There's no	
9 Q You have no knowledg		9	question they were responsible for the valuations.	
10 today, as to whether HCMFA	,	10	They were outsource provider of the valuation	
11 analysis or investigation to tr	·	11	committee. Every individual working and	
12 whether Houlihan Lokey did		12	coordinating with Houlihan Lokey was an HCMFA	
13 connection with its valuation		13	employee. All the data and information that was	
14 A And I wasn't prepared		14	provided to them came from HCMLP. There's no	
15 this is one of the topics - you	u know, Houlihan	15	question that Highland was responsible for the NAV	
16 Lokey's, you know, involvem		16	error. No one ever questioned that. That was	
17 prepared to answer that one		17	always known. It was all the employees that were	
18 Q Okay. Well, the defer	nse HCMFA's	18	involved.	
19 defense is that Highland is re		19	MR. RUKAVINA: John, I'll just	
20 TerreStar valuation issue; co	orrect?	20	reiterate that we did not understand your	
21 A Yes.		21	topics to include Houlihan Lokey. If you	
22 Q And there's no question	on that Houlihan	22	need more information about that or if we	
23 Lokey provided services in c	connection with that	23	need to have a supplemental deposition,	
24 valuation; correct?		24	that's fine. But this is just not	
25 A Correct.		25	something that we reasonably anticipated	
	Page 116			Page 117
1 Dustin Norris		1	Dustin Norris	5-
 Dustin Norris you asking about. 		1	Dustin Norris have produced it to you. So if you have	
2 you asking about.	ık it's I	2	have produced it to you. So if you have	
you asking about.MR. MORRIS: I thin	ık it's I ıat I need and	2	have produced it to you. So if you have anything like that, we'd love to see it.	
 you asking about. MR. MORRIS: I thin think I have the answer th 	ak it's – I lat I need and esident and	2 3 4	have produced it to you. So if you have anything like that, we'd love to see it. We do not even know whether we had a	
 you asking about. MR. MORRIS: I thin think I have the answer th that the executive vice pre 	ak it's – I nat I need and esident and nowledge of any	2 3 4 5	have produced it to you. So if you have anything like that, we'd love to see it. We do not even know whether we had a contract with Houlihan Lokey or not. So	
you asking about. MR. MORRIS: I thin think I have the answer th that the executive vice pre 30(b)(6) witness has no ki	ak it's I nat I need and esident and nowledge of any nat has been	2 3 4 5 6	have produced it to you. So if you have anything like that, we'd love to see it. We do not even know whether we had a contract with Houlihan Lokey or not. So we'll try to find you information, John.	
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4 Dustin Namin	Page 118	_	Duration Name	Page 119
1 Dustin Norris		1	Dustin Norris	
2 BY MR. MORRIS:			Q They sent to the board of the fund?	
3 Q And I'm asking about HCMFA.			A Oh, the board of the fund.	
4 Did has HCMFA ever informed		4	There were a number of memos and	
5 Houlihan Lokey that HCMFA believes that Houlihan			presentations. If you have one you want to pull	
6 Lokey made a mistake or error in the work that it			up, you can we can refer to it.	
7 did?			Q Sure.	
8 A There were ongoing discussions extensively		8	MR. MORRIS: Let's put up what	
9 throughout this with Houlihan Lokey and the debtor		9	we've marked as Exhibit 182.	
10 employees regarding the error and what the causes		10	(Exhibit 182 tendered.)	
11 were. It was extensive discussions.			BY MR. MORRIS:	
12 MR. MORRIS: Okay. Move to strike.		12	Q And while we're doing that, have you ever	
13 BY MR. MORRIS:	l .		seen a single document anywhere at any time in	
14 Q Has HCMFA ever told Houlihan Lokey that			which any representative of HCMFA took Highland to	
15 HCMFA believes that Houlihan Lokey made a mistake			task for the work that it did in connection with	
16 or an error in connection with its valuation			the TerreStar valuation?	
17 services?		17	A "Took them to task"? Define "take them to	
18 A It may have, but I'm not aware.			task."	
19 Q Thank you.		19	Q Told them that they were the source and	
20 Are you familiar with the report that			cause of the NAV error.	
21 HCMFA prepared and sent to the Global Allocation	2	21	A The irony of all of the reporting to the	
22 Fund concerning the TerreStar valuation issues?	2		board, all of the valuation knowledge was from	
23 A They sent to the fund?	2		HCMLP's employees. We we outsourced that to	
24 Q Uh-huh.	2	24	them. There was there was no question that	
25 A What do you mean "they sent to the fund"?	2	25	they were at fault, and that's every employee	
	Page 120			Page 121
1 Dustin Norris		1	Dustin Norris	
2 involved was an HCMLP employee.			analyzed and debated and communications with the	
3 MR. MORRIS: I move to strike.	;		SEC, during that entire period, Jim Dondero was in	
4 BY MR. MORRIS:		_	control of both HCMFA and Highland; correct?	
5 Q And I'm going to ask you, sir, to listen		5	A Yes, I believe so.	
6 carefully to my question.		_		
			Q Okay. Can you identify any employee of	
7 Have you ever seen a document that		7	Highland who was fired as a result of any of the	
8 HCMFA sent to Highland in which HCMFA accused		7 8	Highland who was fired as a result of any of the mistakes that were made in connection with the	
8 HCMFA sent to Highland in which HCMFA accused9 Highland of being the cause of the NAV error?		7 8 9	Highland who was fired as a result of any of the mistakes that were made in connection with the TerreStar valuation?	
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1 Dustin Norris	Page 122	1 Dustin Norris	Page 123
1			
2 A There was a remediation process that had			
3 to go into effect, which was improvement of4 controls, and they maybe even hired additional			
		. ,	
5 people. But it was and I don't I'm not		Subject to that clarification, is my description otherwise correct?	
6 aware of any disciplinary, but there could have			
7 been.			
8 Q Okay. But that would just be speculation		8 communications with the board, and this is the	
9 on your part; correct?		9 resolution of the whole process, or most of the	
10 A Yeah.		0 process.	
11 Q So have you seen the document that's up on		1 Q This was a pretty big issue for HCMFA,	
12 the screen?		2 wasn't it?	
13 A I have.		3 A There was a lot of people involved. It	
14 Q Did you read it before it was sent?		4 was there was a lot of involvement from	
15 A I don't think so.		5 mostly Highland Capital Management, LP, employees,	
16 Q Did anybody did any officer or employee		6 but it was there was a lot involved.	
17 take responsibility for making sure that		7 Q And who what outside counsel was	
18 withdrawn.		8 retained?	
19 What is this document?		9 A Adviser counsel is counsel is I	
20 A It is titled "Resolution of the Funds Net		20 believe it was K&L Gates for HCMFA.	
21 Asset Value Error."		21 Q And who was Highland's counsel?	
22 Q And was is it your understanding that		22 A Idon't know.	
23 the purpose of this document was to enable HCMFA		23 Q Do you know if Highland had counsel?	
24 to explain to the Global Allocation Fund how the		24 A I don't know.	
25 resolution of the NAV error was being conducted?	2	5 Q Do you	
1 Duotin Norrio	Page 124	1 Duatin Norria	Page 125
1 Dustin Norris		1 Dustin Norris	Page 125
2 A I know they had counsel they referred to		2 the responsible party.	Page 125
2 A I know they had counsel they referred to 3 for SEC matters, and I don't know if they utilized		the responsible party.But I would say every single person	Page 125
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1	Page 1		Duetin Nervic	Page 127
1	Dustin Norris	1	Dustin Norris	
2	Q Okay. But my question was a little bit	3	A Not that I'm aware of. Q Did HCMFA send this memorandum	
3	broader, and that was whether there was any	.	Q Did HCMFA send this memorandum withdrawn.	
4	officer or employee who was given the responsibility of making sure this document was	5	Did HCMFA intend this withdrawn.	
5	true and accurate before it was sent to the board	6		
7	of the GAF.	7	Did HCMFA expect the GAF board to rely on this memorandum?	
7	A I don't even know who drafted this. It		A I don't know what the intention was.	
8	would have come from Highland's compliance legal	8	Q You don't know what HCMFA's intention was	
9				
10	and accounting team with all the expertise around the NAV error and all of those that were involved.	10	3	
12				
	Q So did you see this document at or around the time it was sent to the GAF board?	12		
13		13		
14	·			
15	Q Do you recall telling anybody at that time	15		
16	that you believed there were any errors in the document?	16		
17		17		
18	A I think, as I testified before, I	18		
19	don't I don't remember reading it. But I	19		
20	didn't I didn't say there were errors in the	20		
21	document, no.	21	A Yup.	
22	Q Prior to the answer date of March 1st,	22	•	
23	2021, did anybody acting on behalf of HCMFA ever	23	,	
24	tell anybody in the world at any time that there	24	,	
25	was any error in this memorandum?	25	A Sorry. Which part? Just the first	
	Done 1			
1	Page 1		Ductin Narric	Page 129
1	Dustin Norris	1	Dustin Norris	Page 129
2	Dustin Norris sentence of the second paragraph?	2	Q Okay. And HCMFA told the GAF board at	Page 129
2	Dustin Norris sentence of the second paragraph? Q Yeah. First of all, do you see that the	3	Q Okay. And HCMFA told the GAF board at that time that HCMFA and Houlihan Lokey, quote,	Page 129
2 3 4	Dustin Norris sentence of the second paragraph? Q Yeah. First of all, do you see that the second paragraph refers to the adviser and	1 2 3 4	Q Okay. And HCMFA told the GAF board at that time that HCMFA and Houlihan Lokey, quote, "initially determined that the March transactions	Page 129
2 3 4 5	Dustin Norris sentence of the second paragraph? Q Yeah. First of all, do you see that the second paragraph refers to the adviser and Houlihan Lokey?	1 2 3 4 5	Q Okay. And HCMFA told the GAF board at that time that HCMFA and Houlihan Lokey, quote, "initially determined that the March transactions were non-orderly and should be given zero	Page 129
2 3 4	Dustin Norris sentence of the second paragraph? Q Yeah. First of all, do you see that the second paragraph refers to the adviser and Houlihan Lokey? A It does.	1 2 3 4 5 6	Q Okay. And HCMFA told the GAF board at that time that HCMFA and Houlihan Lokey, quote, "initially determined that the March transactions were non-orderly and should be given zero weighting for purposes of fair value."	Page 129
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1 Dustin Norris	Page 130	1	Dustin Norris	Page 131
2 Is that correct?			agree with me that there's no reference to	
3 A The in the memo, it says that on this			Highland Capital Management, LP, anywhere in this	
4 date, there were many other conversations probably			report; correct?	
5 around this date and on this date discussing the		5	A No, there's not, but the board knew that	
6 determinations and non-orderly and that it was the			HCMLP was preparing the valuations.	
7 HCMLP employees, and the board knew that. They		7	MR. MORRIS: All right. I move to	
8 were very aware that it was the – the valuation		8	strike after the word "no."	
9 control environment of HCMLP that determined these			BY MR. MORRIS:	
10 were non-orderly transactions.		10	Q And it was the determination concerning	
11 Q So this so this report is inaccurate,			whether or not it was orderly or non-orderly, and	
12 according to you?			whether or not to use zero weighting that were the	
13 A No. There's there's just your			two causes of the NAV error; correct?	
14 question was did they tell the board. There is a		14	A Those were key portions.	
		15	* *	
15 lot that we told the board outside of this memo.16 This memo does say advised from Houlihan Lokey.			Q In the last sentence, in fact, that's the only portions; isn't that fair?	
		10 17	A "Initially determined" – well, it doesn't	
17 The adviser is ultimately responsible. But there 18 was a lot of communication with the board			say that there's not other factors. They're the	
			only ones mentioned.	
			Q Let me let me read the last	
		20		
21 was responsible for valuation as the board		21	Sentence.	
determining that these were market transactions		22	Quote: "The orderly determination and	
23 and orderly or non-orderly.			adoption of the weighted fair value methodology	
24 Q Okay. I want to focus on this memo,			resulted in NAV errors in the fund," and that's	
25 because this is the one that I have. And you'll	2	25	what it's defining as the NAV error.	
1 Dustin Norris	Page 132	1	Dustin Norris	Page 133
2 Have I read that correctly?		2	dispute that Houlihan Lokey was approved by the	
3 A You did.			board. You're just telling me that, as you sit	
4 Q And so would you agree with me, as HCMFA's			here today, that's the one fact that you've not	
5 30(b)(6) witness, that on May 28th, 2019, HCMFA			been able to confirm; is that fair?	
6 told the GAF board that the two causes of the NAV		_	A As far as I know, yeah.	
7 error were the orderly determination and the	-		Q Okay. Let's go on to the next paragraph.	
8 adoption of the weighted fair value methodology –		8	MR. MORRIS: If we could just	
9 fair value fair valuation methodology?		9	scroll up a little bit.	
10 A Those were it doesn't say those are			BY MR. MORRIS:	
11 exclusively the only factors, but those are		11	Q I'm going to try and summarize here, but	
12 mentioned here.			if you don't think it's a fair summary, of course	
13 Q It says those two factors resulted in the			I would encourage you to let me know.	
			Is it fair to say that, as a general	
14 NAV error: correct?	∣ 1	14	io iciaii to oay tiiat, as a goriotal	
,		14 15	matter, the next nargaranh describes a total loss	
15 A Those no, it didn't say "the NAV	1	15	matter, the next paragraph describes a total loss from the NAV error as being approximately	
15 A Those – no, it didn't say "the NAV 16 error." It said "in NAV errors."	1	15 16	from the NAV error as being approximately	
 15 A Those – no, it didn't say "the NAV 16 error." It said "in NAV errors." 17 Q Which it's defining as the NAV error; 	1 1 1	15 16 17	from the NAV error as being approximately \$7.5 million?	
 15 A Those – no, it didn't say "the NAV 16 error." It said "in NAV errors." 17 Q Which it's defining as the NAV error; 18 correct? 	1 1 1	15 16 17 18	from the NAV error as being approximately \$7.5 million? A Yeah, including processing costs and	
 15 A Those – no, it didn't say "the NAV 16 error." It said "in NAV errors." 17 Q Which it's defining as the NAV error; 18 correct? 19 A Defines as "the NAV error." 	1 1 1 1	15 16 17 18	from the NAV error as being approximately \$7.5 million? A Yeah, including processing costs and rebates and offsets, yes.	
 15 A Those – no, it didn't say "the NAV 16 error." It said "in NAV errors." 17 Q Which it's defining as the NAV error; 18 correct? 19 A Defines as "the NAV error." 20 Q Okay. Does HCMFA contend that there's 	1 1 1 1 2	15 16 17 18 19 20	from the NAV error as being approximately \$7.5 million? A Yeah, including processing costs and rebates and offsets, yes. Q Right. That's what the parenthetical	
15 A Those – no, it didn't say "the NAV 16 error." It said "in NAV errors." 17 Q Which it's defining as the NAV error; 18 correct? 19 A Defines as "the NAV error." 20 Q Okay. Does HCMFA contend that there's 21 anything in this paragraph that is inaccurate?	1 1 1 1 1 2 2	15 16 17 18 19 20 21	from the NAV error as being approximately \$7.5 million? A Yeah, including processing costs and rebates and offsets, yes. Q Right. That's what the parenthetical says, a total loss	
15 A Those – no, it didn't say "the NAV 16 error." It said "in NAV errors." 17 Q Which it's defining as the NAV error; 18 correct? 19 A Defines as "the NAV error." 20 Q Okay. Does HCMFA contend that there's 21 anything in this paragraph that is inaccurate? 22 A Again, I – I don't know that Houlihan	1 1 1 1 1 2 2 2	15 16 17 18 19 20 21	from the NAV error as being approximately \$7.5 million? A Yeah, including processing costs and rebates and offsets, yes. Q Right. That's what the parenthetical says, a total loss — A Yup.	
15 A Those – no, it didn't say "the NAV 16 error." It said "in NAV errors." 17 Q Which it's defining as the NAV error; 18 correct? 19 A Defines as "the NAV error." 20 Q Okay. Does HCMFA contend that there's 21 anything in this paragraph that is inaccurate? 22 A Again, I – I don't know that Houlihan 23 Lokey was approved by the board, but I don't know	1 1 1 1 2 2 2 2	15 16 17 18 19 20 21 22 23	from the NAV error as being approximately \$7.5 million? A Yeah, including processing costs and rebates and offsets, yes. Q Right. That's what the parenthetical says, a total loss – A Yup. Q – of approximately \$7.5 million?	
15 A Those – no, it didn't say "the NAV 16 error." It said "in NAV errors." 17 Q Which it's defining as the NAV error; 18 correct? 19 A Defines as "the NAV error." 20 Q Okay. Does HCMFA contend that there's 21 anything in this paragraph that is inaccurate? 22 A Again, I – I don't know that Houlihan	1 1 1 1 2 2 2 2 2 2	15 16 17 18 19 20 21	from the NAV error as being approximately \$7.5 million? A Yeah, including processing costs and rebates and offsets, yes. Q Right. That's what the parenthetical says, a total loss — A Yup.	

1 Dustin Norris	Page 134	1 Dustin Norris	Page 135
Dustin Norris loss was funded with two payments. Do I have that		1 Dustin Norris 2 negligent valuation services in connection with	
3 correct in the first sentence?		3 the NAV error; correct?	
4 A Correct.		4 A Sorry. One more time.	
5 Q Okay. Did HCMFA pay approximately		5 Q HCMFA contends that the \$7.4 million in	
6 \$5.186 million on or around February 15, 2019, in 7 connection with the NAV error?		5 payments was supposed to be compensation resulting	
		7 from Highland's negligent valuation services; 3 correct?	
9 And if we go to the next page, it has			
10 dates and payments. I think it's represented11 there.			
		2 that Highland was the cause of the NAV error? 3 A The there was never I don't think	
13 make that payment?			
14 A A combination of insurance proceeds and		4 there was ever a question. It was always known	
15 cash that it had. And, again, that's detailed, I		 that HCMLP employees were the ones creating the valuation, overseeing the valuation, working with 	
16 believe, on the next page.			
17 Q HCMFA contends that the \$7.4 million		7 the value you know, everything that was done	
18 transferred by Highland to HCMFA was mistakenly19 recorded as a loan; correct?		was outsourced to HCMLP. And so it was discussed with the	
•			
20 A There's there's two different amounts		0 board. It was discussed in-depth internally. The	
21 that we contend were recorded as a note, a	2		
22 combined 7.4 million, yes.		2 pinpoint a date, but there it was a known	
23 Q Okay. And HCMFA contends that the		3 factor that HCMLP was responsible.	
24 \$7.4 million in payments was not to be a loan, but		4 MR. MORRIS: Okay. I move to	
25 was supposed to be compensation for Highland's	2	5 strike.	
1 Dustin Norris	Page 136	1 Ductio Nomic	Page 137
		Dustin Norris	
2 BY MR. MORRIS:		Q No question no question that HCMFA knew	
2 BY MR. MORRIS:3 Q The only thing I'm asking you for is a	:	Q No question no question that HCMFA knew before February 15, 2019, that there was a NAV	
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A Durfu M. 1	Page 138	Duratio N. 1	Page 139
1 Dustin Norris			
2 the authority on both sides to make that decision.		2 an agreement to that effect, no.	
3 Q Okay. And so Mr. Dondero reached an		B Q You haven't seen anything; correct?	
4 agreement with himself pursuant to which HCMFA		A No.	
5 demanded and Highland agreed to pay the		5 Q Have you looked?	
6 \$7.4 million as a consequence of Highland's	'	6 A We have. I actually wouldn't be	
7 negligent conduct in the performance of its	'	surprised I would be surprised to see one. And	
8 valuation services. Do I have that right?	1	B it's my understanding is and the company's	
9 A Sounds like there's a legal determination	!	position is that there doesn't need to be an	
10 there that needs to be made. I	1	0 agreement. Right? We	
11 Q It's a factual one, I promise.	1	1 Q I'm not asking I'm going to interrupt	
12 A Entering whether entering into an	1	2 you again. I'm not asking you	
13 agreement or not, I that seems like a legal	1	3 MR. RUKAVINA: Well, John	
14 determination. But maybe ask the question again.	1	4 MR. MORRIS: anything like that.	
15 Q Did somebody on behalf of Highland agree	1	5 I need him to answer my questions or we're	
16 to pay HCMFA \$7.4 million in order to compensate	1	6 going to be here all night.	
17 HCMFA for Highland's negligent services in	1		
18 connection with the TerreStar valuation?	1	8 BY MR. MORRIS:	
19 A Yes. Mr. Dondero.	1		
20 Q Thank you.		0 anything	
21 Is there any document anywhere that	2		
22 you have ever seen that reflects Highland's	2	•	
23 agreement to pay \$7.4 million as compensation to	2		
24 HCMFA?	2		
25 A I haven't seen a settlement agreement or	2		
25 A Thavent Seema Settlement agreement of		o IVIIN. INDIVAVIINA. JOHN, ILISTIOLOGI	
	Page 140		Page 141
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2 position it is not it is our		Q And the cash portion was really just the	
 position – it is not – it is our position that there is no settlement 	:	2 Q And the cash portion was really just the 3 deductible?	
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1	Page 142 Dustin Norris	1 Dustin Norris	Page 143
'	yourself with the insurance claim?	2 insurance company	
3	A I discussed with DC and Davor the	3 Q And and the filing	
1	company's position on the insurance claim.	4 A on behalf of HCMFA.	
5	Q Okay. I don't want to know what the	5 Q And the filing that was made, was that a	
6	company's position is. I want to know what the	6 claim that was made on behalf of HCMFA?	
7	facts are.	7 A I believe so, yes.	
8			
_	Did you learn any facts in connection	8 Q And did HCMFA authorize the filing of that 9 claim?	
9	with your diligence and your preparation to answer		
10	topic questions on Topic Number 8?	·	
11	A Yeah. The HCMFA policy was was the		
12	HCMFA HCMFA had an insurance policy with ICI	12 Q All right. Did HCMFA authorize the filing	
13	Mutual; and based on the NAV error, the policy	13 of the insurance claim?	
14		14 A II don't know.	
15	to seek reimbursement for the NAV error.	15 Q Did – has HCMFA ever told anybody at any	
16	Q Okay. So	16 time that the insurance claim was not authorized	
17	(Reporter discussion off the record.)	17 by HCMFA?	
18	BY MR. MORRIS:	18 A No.	
19	Q So did HCMFA file a claim for insurance	19 Q And HCMFA received almost \$5 million on	
20	coverage with ICI Mutual in connection with the	20 account of the claim; right?	
21	NAV error?	21 A Correct.	
22	A The HCMLP employees, I believe, through	22 Q And HCMFA wanted to recover on its	
23	Frank Waterhouse and his team, did that. They -	23 insurance claim; correct?	
24	, ,	24 A Yes.	
25	services agreement, and they filed with the	25 Q Did the claim was the claim made in	
4	Page 144	4 Dustin Namin	Page 145
1	Dustin Norris	1 Dustin Norris	
2	writing?	2 interacting with ICI Mutual.	
3	A I believe so.	3 Q HCMFA and HCMLP broke up at the end of	
4	Q Have you seen the claim?	4 February; is that fair?	
5		E A Thota compost	
^	A I don't I don't recall seeing the	5 A That's correct.	
6	claim.	6 Q At any time since the end of February, has	
7	claim. Q In connection with the defense of this	6 Q At any time since the end of February, has7 HCMFA made any effort to obtain any information	
7	claim. Q In connection with the defense of this lawsuit and the preparation, have you made any	 6 Q At any time since the end of February, has 7 HCMFA made any effort to obtain any information 8 concerning this insurance claim from ICI Mutual? 	
7 8 9	claim. Q In connection with the defense of this lawsuit and the preparation, have you made any efforts to identify the actual claim that was	 6 Q At any time since the end of February, has 7 HCMFA made any effort to obtain any information 8 concerning this insurance claim from ICI Mutual? 9 A I don't know where we got the source of 	
7 8 9 10	claim. Q In connection with the defense of this lawsuit and the preparation, have you made any efforts to identify the actual claim that was filed on behalf of HCMFA?	6 Q At any time since the end of February, has 7 HCMFA made any effort to obtain any information 8 concerning this insurance claim from ICI Mutual? 9 A I don't know where we got the source of 10 of the documents, but there there was they	
7 8 9 10 11	claim. Q In connection with the defense of this lawsuit and the preparation, have you made any efforts to identify the actual claim that was filed on behalf of HCMFA? MR. RUKAVINA: Let me interject	6 Q At any time since the end of February, has 7 HCMFA made any effort to obtain any information 8 concerning this insurance claim from ICI Mutual? 9 A I don't know where we got the source of 10 of the documents, but there there was they 11 were searching for the ICI documents. I don't	
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1 Dustin Norris	Page 146	1	Dustin Norris	Page 147
2 Highland Capital Management, LP, was the			7.4 million, with the net net loss that's shown	
3 responsible party; correct?			there, estimated loss.	
4 A I believe so, yes.		4	Q Right. So it's fair to say, then, from	
5 Q Did HCMFA tell the insurance company that		-	that it's HCMFA's position that it received	
6 Highland Capital Management was the responsible			\$7.4 million from Highland as compensation, and	
7 party?			approximately \$5 million from the insurance	
8 A I'm not sure. Again, this was Highland			carrier as compensation for total receipts of	
9 employees that filled out the materials and was			\$12.4 million in connection with the NAV star	
10 working with ICI. So I don't know if your		10	with the TerreStar valuation error?	
11 employees notified them.		11	A Correct.	
12 Q So the total estimated loss was		12	Q Okay. Why would H- – why does HCMFA	
13 approximately \$7.5 million; right? That's the top			contend that its entitled to \$12.4 million from	
14 number on the right?			Highland and the insurance company when the total	
15 A Yes.			loss was only \$7.4 million?	
16 Q Okay. And roughly two-thirds of that was		16	A Yeah, it's it's our position that the	
17 financed through insurance proceeds that were			collateral – and I'm not an attorney. But	
18 received in February of 2019; correct?			understanding our position here, that under Texas	
19 A Correct.			law, the collateral source rule would permit you	
20 Q And thereafter, it's HCMFA's contention			to recover value from the insurance company and to	
			the individual or the the company that created	
22 purposes of providing compensation in connection			the or caused you harm.	
23 with its negligent work on the on the TerreStar		23	Q So you're would you agree that HCMFA	
24 valuation error; correct?			has profited by about \$5 million as a result of	
25 A Yes, that's correct. And that lines up,		25	the NAV error under that theory?	
1 Dustin Norris	Page 148	1	Duetin Norrie	Page 149
1 Dustin Norris 2 A L I don't know that how the theory	Page 148	1	Dustin Norris O Okay, Liust want to make this really	Page 149
2 A I I don't know that how the theory	Page 148	2	Q Okay. I just want to make this really	Page 149
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4		age 150	Page 15
1 2	Dustin Norris A That's correct, subject to our defenses.		Dustin Norris (Recess from 2:07 p.m. to 2:21 p.m. CST)
	•		
3	Q Okay. Did has has HCMFA ever informed ICI Mutual that it received \$7.4 million		
_	from Highland on account of the NAV error?		5 insurance payment that was received in February 6 of 2010. Development that?
6	A Not that I'm aware of. Q Has HCMFA ever told ICI Mutual that		6 of 2019. Do you remember that? 7 A Yes.
7			
_	Highland was at fault?		8 Q And there was a claim that was filed on
9	A Again, I think I already answered that. I		9 behalf of HCMFA that resulted in that insurance
10	don't know. Communication with ICI was done by		10 proceed payment; correct?
11	the HCMLP employees as part of the shared services		11 A Correct.
12	agreement, and I'm not sure if they communicated		12 Q And do you recall if that insurance claim
	that.		13 was filed in 2018 or 2019?
14	MR. MORRIS: Okay. I move to		14 A I don't recall, but I believe it was late
15	strike.		15 2018. But I don't know.
	BY MR. MORRIS:		16 Q Yeah.
17	Q I just I'm just asking for your		17 A And as we testified, we don't have that
18	knowledge, not speculation.		18 claim. We've searched for it. It's probably on
19	Do you have any knowledge that anyone		19 your server, as I Frank Waterhouse and his team
20	on behalf of HCMFA ever informed ICI Mutual that		20 would have submitted that.
21	Highland was the cause of the NAV error?		21 Q Yeah. But you haven't made any effort to
22	A I have no knowledge.		22 get it from the carrier; right?
23	MR. MORRIS: Let's take a short		23 A No, not that I know of.
24	break. The time now is 3:06 or 2:06.	2	24 Q Okay. And would you agree with me that
25	Let's just come back at 3:20.	2	25 it's probably extremely unlikely that an insurance
		age 152	Page 15
1	Dustin Norris		1 Dustin Norris
	carrier would have processed a claim of that		2 reference to a period from March 18, 2018, to
3	magnitude in six weeks?		
4	-		3 January 19, 2019?
	A I know they expedited it and they		3 January 19, 2019?4 A Yes.
	A I know they expedited it and they specialize in sorry. I'll step back.		 January 19, 2019? A Yes. Q That's what they've defined as the NAV
5 6	A I know they expedited it and they specialize in sorry. I'll step back. I have no knowledge of how quick		 January 19, 2019? A Yes. Q That's what they've defined as the NAV restatement period. Do you see that?
5 6 7	A I know they expedited it and they specialize in sorry. I'll step back. I have no knowledge of how quick carriers make these claims		 January 19, 2019? A Yes. Q That's what they've defined as the NAV restatement period. Do you see that? A Yes, I do.
5 6 7 8	A I know they expedited it and they specialize in sorry. I'll step back. I have no knowledge of how quick carriers make these claims Q All right. Do you know		 January 19, 2019? A Yes. Q That's what they've defined as the NAV restatement period. Do you see that? A Yes, I do. Q Okay. Looking at that period, does that
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5 6 7 8 9 10 11 12	A I know they expedited it and they specialize in sorry. I'll step back. I have no knowledge of how quick carriers make these claims Q All right. Do you know A Other than hail on my house hail damage on my roof, I don't have personal knowledge of insurance claims. MR. MORRIS: You know, I apologize, but can I ask Ms. Canty to put back up on the screen that last exhibit that we had?		3 January 19, 2019? 4 A Yes. 5 Q That's what they've defined as the NAV 6 restatement period. Do you see that? 7 A Yes, I do. 8 Q Okay. Looking at that period, does that 9 refresh your recollection at all as to when in 10 2018 HCMFA first learned about the NAV error? 11 A No, because that was that was the 12 period of time when the market the off-market
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5 6 7 8 9 10 11 12 13 14	A I know they expedited it and they specialize in sorry. I'll step back. I have no knowledge of how quick carriers make these claims Q All right. Do you know A Other than hail on my house hail damage on my roof, I don't have personal knowledge of insurance claims. MR. MORRIS: You know, I apologize, but can I ask Ms. Canty to put back up on the screen that last exhibit that we had?		3 January 19, 2019? 4 A Yes. 5 Q That's what they've defined as the NAV 6 restatement period. Do you see that? 7 A Yes, I do. 8 Q Okay. Looking at that period, does that 9 refresh your recollection at all as to when in 10 2018 HCMFA first learned about the NAV error? 11 A No, because that was that was the 12 period of time when the market the off-market 13 or on-market transactions happened, March 18th. 14 Q Okay.
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5 6 7 8 9 10 11 12 13 14 15 16 17	A I know they expedited it and they specialize in sorry. I'll step back. I have no knowledge of how quick carriers make these claims Q All right. Do you know A Other than hail on my house hail damage on my roof, I don't have personal knowledge of insurance claims. MR. MORRIS: You know, I apologize, but can I ask Ms. Canty to put back up on the screen that last exhibit that we had? I don't have the exhibit number. All right. And go to the prior page. And go to the bottom of that page.		January 19, 2019? A Yes. Q That's what they've defined as the NAV restatement period. Do you see that? A Yes, I do. Q Okay. Looking at that period, does that refresh your recollection at all as to when in 2018 HCMFA first learned about the NAV error? A No, because that was that was the period of time when the market the off-market or on-market transactions happened, March 18th. Q Okay. A It was sometime in between that they found out that there was an error. Q Okay. And do you know if it was the first
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1	Pa Dustin Norris	age 154	1	Dustin Norris	Page 155
	September is when HCMFA first learned about it?			several weeks, if not months.	
_	A About define "it." Is that the NAV		3	So that is not when they found out	
	error.			about a NAV error, but the questions over	
	Q I apologize. Let me ask the question			valuation, yes.	
	again.		6	Q Okay. So then let me state the question	
7	Is it fair to say, based on the timing			differently then.	
	of the audit, 60 days after June 30th would take		8	Is it fair to say that HCMFA first	
	us to approximately August 31st; right?			learned in or about August 2018 of the valuation	
	A It does.			issues?	
	Q And so is it fair to say, then, that HCMFA		11	A The "about" is key here. I don't know the	
	first learned about the NAV error sometime in			specific date, but around that time or earlier	
	August of 2018 while it was preparing the		13	Q Okay.	
	financials for the period ending June 30th?		14	A or later. On or around that time.	
	A No. I don't think there was a		15	Q And did HCMFA conclude, at the same time	
	determination of whether there was a NAV error or			it learned of the valuation issues, that HCMFA was	
	not at that point. I think the reason they have			the responsible party? Or was there a gap between	
	going all the way to January 19 – 2019 is it			learning about the valuation issues and making the	
	wasn't determined finalized if there is an			determination that Highland was the responsible	
	error or not.			party?	
20 (There was a lot of discussion with the		21	A Yeah, first you said HCMFA was the	
	SEC and auditors over whether there was or wasn't			responsible party, and then you said Highland.	
	an error, what the amount was, what the proper		23	Q I apologize. Let me try and restate that.	
	valuation should be. There was consultation with		24	Did HCMFA conclude that Highland was	
	the SEC, and that process lasted, I believe,			the responsible party at or around the same time	
20 (and one, and that process lasted, i believe,			the responsible party at or around the same time	
1	Pa Dustin Norris	age 156	1	Dustin Norris	Page 157
2 tl	hat it learned of the valuation issues, or was		2	Q Do you know when there was a determination	
	here a period during which it knew about the			that there was a NAV error?	
	/aluation issues, but not had not yet formed		4	A I don't know the specific time, no.	
	he conclusion that Highland was the responsible		_	Q Do you know if it was in 2019 or 2018?	
	party?		5		
7	•			A I don't remember.	
	A From the beginning, everybody knew who the		6	•	
8 r	A From the beginning, everybody knew who the esponsible party was for the valuation. Those		6 7	A I don't remember.	
			6 7	A I don't remember. Q Is it fair to say that it was before	
9 r	esponsible party was for the valuation. Those		6 7 8 9	A I don't remember. Q Is it fair to say that it was before May of 2019?	
9 r 10 a	esponsible party was for the valuation. Those eporting the issues, those responding to	1	6 7 8 9	A I don't remember. Q Is it fair to say that it was before May of 2019? A That there was a determination there was a	
9 r 10 a 11 v	esponsible party was for the valuation. Those eporting the issues, those responding to auditors, those responding to SEC and the board	1	6 7 8 9 10	A I don't remember. Q Is it fair to say that it was before May of 2019? A That there was a determination there was a NAV error? Yes.	
9 ro 10 a 11 v 12 l	responsible party was for the valuation. Those reporting the issues, those responding to auditors, those responding to SEC and the board were all HCMLP employees from the beginning. But	1	6 7 8 9 10 11	A I don't remember. Q Is it fair to say that it was before May of 2019? A That there was a determination there was a NAV error? Yes. Q And is it fair to say that HCMFA had	
9 ro 10 a 11 v 12 l 13	responsible party was for the valuation. Those reporting the issues, those responding to auditors, those responding to SEC and the board were all HCMLP employees from the beginning. But I don't have a specific date.	1 1 1 1	6 7 8 9 10 11 12	A I don't remember. Q Is it fair to say that it was before May of 2019? A That there was a determination there was a NAV error? Yes. Q And is it fair to say that HCMFA had concluded that the loss of that NAV error was	
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9 rd 10 a 11 v 12 l 13 14 s 15 t	responsible party was for the valuation. Those reporting the issues, those responding to auditors, those responding to SEC and the board were all HCMLP employees from the beginning. But I don't have a specific date. Again, as you look here, it doesn't say when the NAV error was determined, but from	1 1 1 1 1 1 1 1	6 7 8 9 10 11 12 13	A I don't remember. Q Is it fair to say that it was before May of 2019? A That there was a determination there was a NAV error? Yes. Q And is it fair to say that HCMFA had concluded that the loss of that NAV error was going to be more than a million dollars prior to May 2019?	
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9 rd 110 a 111 v 1112 l 1113 d 1114 s 1115 d 1116 l 1117 d 1118 d 1119 a	responsible party was for the valuation. Those reporting the issues, those responding to auditors, those responding to SEC and the board were all HCMLP employees from the beginning. But I don't have a specific date. Again, as you look here, it doesn't say when the NAV error was determined, but from the beginning, it was the knowledge that HCMLP was responsible for the valuations. Q Okay. Do you know when HCMFA first determined that the estimated loss was approximately \$7.4 million?	1 1 1 1 1 1 1 1 2 2	6 7 8 9 10 11 12 13 14 15 16 17 18 19	A I don't remember. Q Is it fair to say that it was before May of 2019? A That there was a determination there was a NAV error? Yes. Q And is it fair to say that HCMFA had concluded that the loss of that NAV error was going to be more than a million dollars prior to May 2019? A More than a million? Probably yes. Q Okay. Is there a reason that HCMFA waited until May to have Highland pay it for the compensation? A I think that the whole process as you	
9 ri 110 a 111 v 112 I 113 i 114 s 115 i 116 i 117 i 118 a 119 a 20 i	responsible party was for the valuation. Those reporting the issues, those responding to auditors, those responding to SEC and the board were all HCMLP employees from the beginning. But I don't have a specific date. Again, as you look here, it doesn't say when the NAV error was determined, but from the beginning, it was the knowledge that HCMLP was responsible for the valuations. Q Okay. Do you know when HCMFA first determined that the estimated loss was approximately \$7.4 million? A I don't, no. I don't have specifics, but	1 1 1 1 1 1 1 1 2 2 2 2	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A I don't remember. Q Is it fair to say that it was before May of 2019? A That there was a determination there was a NAV error? Yes. Q And is it fair to say that HCMFA had concluded that the loss of that NAV error was going to be more than a million dollars prior to May 2019? A More than a million? Probably yes. Q Okay. Is there a reason that HCMFA waited until May to have Highland pay it for the compensation? A I think that the whole process as you see, the resolution memo is in May to the board.	
9 m 10 a 11 m 12 l 13 m 14 s 15 m 16 m 17 m 18 m 20 m 21 m 22 a	responsible party was for the valuation. Those reporting the issues, those responding to auditors, those responding to SEC and the board were all HCMLP employees from the beginning. But I don't have a specific date. Again, as you look here, it doesn't say when the NAV error was determined, but from the beginning, it was the knowledge that HCMLP was responsible for the valuations. Q Okay. Do you know when HCMFA first determined that the estimated loss was approximately \$7.4 million? A I don't, no. I don't have specifics, but it was after there was a determination there was actually a NAV error. And it may be in some of	11 11 11 11 12 22 22 22	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A I don't remember. Q Is it fair to say that it was before May of 2019? A That there was a determination there was a NAV error? Yes. Q And is it fair to say that HCMFA had concluded that the loss of that NAV error was going to be more than a million dollars prior to May 2019? A More than a million? Probably yes. Q Okay. Is there a reason that HCMFA waited until May to have Highland pay it for the compensation? A I think that the whole process as you see, the resolution memo is in May to the board. That was the conclusion of the overall process. So our stance would be that that was when it was	
9 rd 10 a 11 rd 12 ld 13 ld 14 s 15 ld 16 ld 17 ld 18 c 20 ld 22 a 12 ld 18 ld 19 a 22 a 12 ld 18 ld 19 ld 18 ld 19 ld 18 ld 18 ld 19 ld 18 ld 1	esponsible party was for the valuation. Those reporting the issues, those responding to auditors, those responding to SEC and the board were all HCMLP employees from the beginning. But I don't have a specific date. Again, as you look here, it doesn't say when the NAV error was determined, but from the beginning, it was the knowledge that HCMLP was responsible for the valuations. Q Okay. Do you know when HCMFA first determined that the estimated loss was approximately \$7.4 million? A I don't, no. I don't have specifics, but it was after there was a determination there was	111111111111111111111111111111111111111	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A I don't remember. Q Is it fair to say that it was before May of 2019? A That there was a determination there was a NAV error? Yes. Q And is it fair to say that HCMFA had concluded that the loss of that NAV error was going to be more than a million dollars prior to May 2019? A More than a million? Probably – yes. Q Okay. Is there a reason that HCMFA waited until May to have Highland pay it for the compensation? A I think that the whole process – as you see, the resolution memo is in May to the board. That was the conclusion of the overall process.	

1 Dustin Norris	Page 158	Dustin Norris	Page 159
		that right?	
	3	A On the second amended answer, yes. Q Yes.	
4 don't know if you're able to get that,5 La Asia.	4		
	5	A I'm sorry. The first amended answer, yes.	
6 MS. CANTY: Yup, I got it.	6	Q And as of today, is it your understanding	
7 MR. MORRIS: Thank you.	7	that this is HCMFA's operative pleading?	
8 (Exhibit 13 tendered.)	8	A No.	
9 BY MR. MORRIS:	9	Q Has it been amended after this time?	
10 Q Are you aware, sir, that there came a	10	,	
11 point in time when HCMFA amended its answer?	11	MR. RUKAVINA: Well, he doesn't	
12 A Yes.	12		
13 Q And I think topic	13		
14 A Topic 2 is our amended answer.	14	,	
15 Q Okay. So that's the document that's in	15	1 9	
16 front of you?	16	•	
17 A Yes.	17		
18 Q And you've seen that before; correct?	18		
19 A Yes.	19	•	
20 Q Okay.	20	, , ,	
MR. MORRIS: Can we turn to Page 5	21	been amended as of today; correct?	
22 of 9, please?	22		
And if we can scroll to the bottom.	23		
24 BY MR. MORRIS:	24	•	
25 Q These are HCMFA's affirmative defenses; is	25	it further	
4 Duette Namis	Page 160	Descrite Mannie	Page 161
1 Dustin Norris	1	Dustin Norris	
2 A Yes.	2	This amended complaint was prepared	
3 Q but that motion hasn't been granted;	3	after DC Sauter conducted an investigation	
4 right?	4	concerning the circumstances surrounding the two	
5 A To my understanding, no.	5	notes that Highland was suing on; right?	
6 Q Okay. And you understand that your the	6	A Yes. My understanding is it is after	
7 answer that's up on the screen can't be amended	7		
	-		
8 unless the Court grants the motion; right?	8	initial response, we didn't have access to the	
9 A I if you tell me that that's the	8	initial response, we didn't have access to the HCMLP employees during that time period. They	
9 A I if you tell me that that's the10 process, I'll take that for what it's worth. I'm	8 9 10	initial response, we didn't have access to the HCMLP employees during that time period. They were not permitted to talk to us about things like	
 9 A I if you tell me that that's the 10 process, I'll take that for what it's worth. I'm 11 not an attorney. I don't know the process. 	8 9 10 11	initial response, we didn't have access to the HCMLP employees during that time period. They were not permitted to talk to us about things like this. And so he did the best he could to prepare	
 9 A I if you tell me that that's the 10 process, I'll take that for what it's worth. I'm 11 not an attorney. I don't know the process. 12 Q Okay. So let's just look at this 	8 9 10 11 12	initial response, we didn't have access to the HCMLP employees during that time period. They were not permitted to talk to us about things like this. And so he did the best he could to prepare a response. But once they were mostly all fired	
 9 A I if you tell me that that's the 10 process, I'll take that for what it's worth. I'm 11 not an attorney. I don't know the process. 12 Q Okay. So let's just look at this 13 document. 	8 9 10 11 12 13	initial response, we didn't have access to the HCMLP employees during that time period. They were not permitted to talk to us about things like this. And so he did the best he could to prepare a response. But once they were mostly all fired by HCMLP and formed their own company called	
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1 Dustin Norris	Page 162	1	Dustin Norris	Page 163
2 months after the complaint is filed; right?			Topic Number 1? No. It's just the answer.	
3 A More like a five-month five months and		3	In looking at the answer, did you look	
4 a week, but yeah.			at the original complaint?	
		5	A Yes.	
		6		
			,	
7 months, yeah.			attached to the original complaint?	
8 Q Okay.		8	A I looked at thousands of pages in	
9 A Whether you consider that			preparation, so I just I could take your word	
10 Q Okay.		10	for it if you say it's in there, or if you want to	
11 A six full months or not.		11	show it to me, we can look at it.	
12 Q So		12	MR. RUKAVINA: They are, Dustin.	
13 A We know the dates January 22nd and		13	They are.	
14 July 6th.		14	MR. MORRIS: Yeah. I think you'll	
15 Q Okay. So for that entire time period of		15	have to take my word for it. Thank you,	
16 time, there's no dispute that HCMFA had in its		16	Davor, for confirming my word.	
17 possession copies of the notes that Highland was		17	BY MR. MORRIS:	
18 suing on; correct?	I	18	Q So let me just try this again to make it	
19 A I'm looking at the original you said	I	19	clean.	
20 they were attached, but I		20	Based on my representation, that	
21 Q Yeah.		21	Mr. Rukavina has agreed with, that the notes that	
22 A If you want to show me the original notes		22	Highland are suing on were attached to its	
23 on the original filing.		23	complaint in January, you would agree with me that	
24 Q Well, I asked you to look at the original		24	HCMFA had the notes in its possession from at	
25 complaint. I think was the original complaint		25	least the time the complaint was filed until the	
1 Dustin Norris	Page 164	1	Dustin Norris	Page 165
2 time HCMFA filed this amended answer on July 6th;			investigation? An analysis? What word do	
•	I	~	invodigation: Analialysis: What word do	
'3 correct')			VOLL WOULD VOLLUSE? Due dilinence? How would	
3 correct?		3	you would you use? Due diligence? How would	
4 A Yes.		3 4	you characterize the work that Mr. Sauter did	
4 A Yes.5 Q And this amended answer was filed because		3 4 5	you characterize the work that Mr. Sauter did that's set forth in his declaration?	
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1 Dustin Norris	Page 166	1 Dustin Norris	Page 167
2 Q Is that correct, that he spoke with		2 notes of James Dondero, formerly the CEO of the	
3 Mr. Dondero in connection with his investigation?		3 debtor, Mr. Dondero.	
4 A I'm – I'm seeing what he rep'ed to in his		4 So this is March 1st when that first	
5 statement.		5 filing was made. So he did speak with Mr. Dondero	
6 Q And does his statement say that? I don't		6 prior, and then I believe the source of the	
7 have it in front of me.		7 additional information was being able to speak	
8 A I don't know. That's what I'm looking at.		8 with Frank Waterhouse and Will Mabry.	
9 Q And you don't know, independently of the		9 Q Okay. And is it fair to say that the	
10 document, whether Mr. Sauter spoke with		0 amended complaint is based on Mr. Sauter's	
11 Mr. Dondero as part of his investigation?		11 investigation?	
12 A I know he did. I know he talked		12 A Yes, I believe so.	
13 throughout from when we received the original		13 Q Yeah.	
14 complaint on. I just you're asking about the		14 A Yes.	
15 time frame between filing the original filing.			
16 And I think he may have spoken with him before		I5 Q That's why HCMFA amended its complaint.It's because Mr. Sauter had undertaken this	
······································		7 investigation, and he learned what he believed	
7 that, too, but I – I just want to take a 8 So at the time – this is on			
 March 1st, filed the defendant's original answer. At that at the time the debtor filed a 		in his declaration, and they formed the basis of the affirmative defenses that we're looking at now	
		•	
21 complaint, I promptly undertook an internal review		21 in the amended answer; fair?	
22 of the background facts concerning the notes. I		22 A Let me pull up the amended answer just	
23 had no knowledge of them since I had not been		23 to	
24 employed by HCMFA. And a few employees of HCMLP		24 Q It's up on the screen, but if you have a	
25 had no knowledge of notes. I also discussed the	4	25 hard copy, that's fine.	
1 Dustin Norris	Page 168	1 Dustin Norris	Page 16
2 A Yeah. I have a hard copy here, although I		2 A 38 to 45.	
3 may have mixed my documents.		3 Yeah, it the NAV error items are	
o may have mixed my decements.			
4 Yeah, it was based on additional facts		4 included in there as one of our defenses.	
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1 Dustin Norris	Page 170	1	Dustin Norris	Page 171
2 Q Okay. And is did did HCMFA accept			Dondero, in his capacity as the president of	
3 responsibility for the NAV error?			Highland Capital Management, LP, accepted	
4 A They did. They they are the adviser,			responsibility on behalf of Highland Capital	
5 and there's already in the next sentence, HCMLP			Management, LP, for having caused the NAV error?	
6 then accepted that they had a contract with and		6	A He, and in addition all of the employees	
			involved. Right? The valuation team members,	
` `			Frank Waterhouse was CFO, Dave Klos overseeing the	
•			_	
9 accept responsibility for having caused the NAV10 error?			valuation process, they were all Highland	
		10	employees, and Jim Dondero as well as president	
11 A Again, going back to this was always		11	recognized that based on all the communications	
12 known and communicated that it was HCMLP		12	and conversations they would have had.	
13 employees. It was the valuation services they		13	MR. MORRIS: Okay. I'm going to	
14 were performing. The legal and compliance team		14	I'm going to move to strike.	
15 was all outsourced in the shared services		15	BY MR. MORRIS:	
16 agreement.		16	Q And I'm going to ask you to listen	
17 And that was again, there's not a		17	carefully to my question.	
18 singular determination; but Jim Dondero, as		18	Who had the authority to accept, on	
19 president, I would say effectuated that with the		19	behalf of plaintiff, the responsibility for having	
20 payment of the NAV for the NAV error.		20	caused the NAV error?	
21 Q So you can't tell me when the plaintiff		21	A Ultimately Jim Dondero, as president here,	
22 accepted responsibility for having caused the NAV		22	had that authority.	
23 error; correct?		23	Q Okay. And then it says, quote: "The	
24 A Not a specific date.		24	plaintiff ultimately, whether through insurance or	
25 Q Okay. And it's HCMFA's position that Jim	'	25	its own funds, compensated the defendant."	
1 Dustin Norris	Page 172	1	Dustin Norris	Page 17
2 Do you see that?			for today's deposition, about that sentence in	
3 A Yes.			Paragraph 42 and whether or not Highland had ever	
		_	5 .	
4 (.) Is that statement accurate?		4	tiled an insurance claim?	
			filed an insurance claim? A Lidigh't ask about that sentence but we	
5 MR. RUKAVINA: I'll object to		5	A I didn't ask about that sentence, but we	
5 MR. RUKAVINA: I'll object to 6 vagueness, given the different points in		5 6	A I didn't ask about that sentence, but we did discuss whether Highland had filed an	
5 MR. RUKAVINA: I'll object to 6 vagueness, given the different points in 7 time.		5 6 7	A I didn't ask about that sentence, but we did discuss whether Highland had filed an insurance claim. And to our knowledge, we don't	
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1 Dustin Norris	Page 174	Dustin Norris	Page 175
2 A Not not that I know of. However, we've3 been not permitted to talk to him related to this,		2 complete, unfettered access to Mr. Waterhouse from 3 the time he left Highland in early March 2021	
4 based on his attorney. So 5 Q Well, when did	5		
6 A We never really discussed – go ahead.			
7 Q I'm sorry.			
8 A Go ahead. You were	8		
9 Q I was just going to ask: When did that	9		
10 prohibition go into effect?	1		
11 MR. RUKAVINA: John, the witness	1		
12 wouldn't know that. It's about three	12		
13 months ago that the lady from Baker	1:		
14 McKenzie, Deb I don't know her last	1		
•		· · · · · ·	
 name – got angry at me because I tried to talk to Frank and she said, "Absolutely 	1:	, ,	
17 not. You're forbidden, and you're	1		
17 not. You're forbidden, and you're 18 violating your ethical rules if you do."	1	5 5	
19 MR. MORRIS: So sometime in	1:	, ,	
	2		
•	2		
, ,		•	
•	2	• • • • • • • • • • • • • • • • • • • •	
23 MR. MORRIS: Okay. 24 BY MR. MORRIS:	2		
	2		
25 Q But sometime but you had HCMFA had	2	5 Q Now, again, this amended complaint is	
1 Dustin Norris	Page 176	Dustin Norris	Page 177
2 filed is July 2006; correct?		2 before there was any limitation or restriction	
3 A July 6th, not July 2006.			
4 Q I apologize. Let me ask the question			
5 again.	5		
6 This amended answer was filed on			
7 July 6th, 2021; correct?			
,,,		were, on both sides, the creation of Skyview as	
8 A Correct.		were, on both sides, the creation of Skyview, as well as our employees, trying as – doing	
8 A Correct.9 Q And it was filed after Mr. Sauter	8	B well as our employees, trying as - doing	
9 Q And it was filed after Mr. Sauter	3	well as our employees, trying as – doing everything we could do to transition the	
9 Q And it was filed after Mr. Sauter10 conducted his investigation to determine the	{ { 1	well as our employees, trying as – doing everything we could do to transition the businesses and services. And so that was an	
 9 Q And it was filed after Mr. Sauter 10 conducted his investigation to determine the 11 circumstances surrounding the note; correct? 	1 1	well as our employees, trying as – doing everything we could do to transition the businesses and services. And so that was an important time.	
 9 Q And it was filed after Mr. Sauter 10 conducted his investigation to determine the 11 circumstances surrounding the note; correct? 12 A Uh-huh, correct. 	1 1 1 1.	well as our employees, trying as – doing everything we could do to transition the businesses and services. And so that was an important time. MR. MORRIS: Okay. Move to strike.	
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1 Dunation	Norris Pag	e 178	Dustin Norris	Page 179
		1		
2 A I don't believ		2		
•	who authorized him to conduct	3		
4 this investigation?	dal bassa bassa sassa sassa sa	4	A Yes.	
	uld have been management,	5	Q Okay. And among the people who migrated	
	probably our outside counsel. At	6	were Stephanie Vitiello; correct?	
	een utilizing Highland's	7	A Yes.	
•	ervices, all the way up until	8	Q And Isaac Leventon; correct?	
9 the end of February		9	A Correct.	
	e legal and compliance	10	3 3 7	
	part of the shared services	11	3 1 1 37 3	
-	e was an entire legal team, entire	12		
_	ho were unable to work on	13	8	
14 this.		14	3	
	was a real estate attorney	15		
•	ed up the slack and was	16		
• •	ondero to help in these causes	17	•	
•	de counsel, because HCMLP was	18	, 3	
	longer able to provide those	19	·	
-	ed on their their view, even	20	ğ	
21 though they were	contracted to do those.	21		
22 Q That contract	ct ended at the end of	22	9	
23 February; isn't that	right?	23		
24 A That's corre		24	preliminary injunction still in place where Jim or	
25 Q And with the	e exception of a couple of	25	his employees could not talk to Scott or Isaac. I	
		e 180		Page 181
	Norris	1	Dustin Norris	
	the specific details, but the	2	1	
	and or at Skyview was not	3	stepped in and help in the absence of HCMLP's	
4 working on this.				
5 Q Okay.		4	•	
,		4 5	Q Okay. And based on that investigation	
6 A It was probal	oly professional I don't	5 6	Q Okay. And based on that investigation looking at Paragraph 43, HCMFA took the position,	
6 A It was probal 7 know the standard	oly professional I don't s, but they were unable to work	5 6 7	Q Okay. And based on that investigation looking at Paragraph 43, HCMFA took the position, quote: "Waterhouse signed the two promissory	
6 A It was probal 7 know the standard 8 on on this.	s, but they were unable to work	5 6 7 8	Q Okay. And based on that investigation looking at Paragraph 43, HCMFA took the position, quote: "Waterhouse signed the two promissory notes the subject of the complaint," close quote;	
6 A It was probal 7 know the standard 8 on on this. 9 Q All right. But	s, but they were unable to work you would agree that at	5 6 7 8 9	Q Okay. And based on that investigation looking at Paragraph 43, HCMFA took the position, quote: "Waterhouse signed the two promissory notes the subject of the complaint," close quote; correct?	
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4	Dustin Norris	Page 182	1	Dustin Norris	Page 183
1	I – I believe he said he was – Mr. Waterhouse		1	he told his controller, Mr. Klos, to transfer the	
2					
3	told him he signed, but			funds, and Mr. Klos then turned around and asked	
4	Q Right. And, in fact, HCMFA's position			Kristin to paper it up as a note, and to transfer	
5	throughout this entire case was that			the cash. And Ms. Hendrix Kristin Hendrix then	
6	Mr. Waterhouse signed the notes, but he did so by			added Mr. Waterhouse's JPEG signature to the Word	
1	mistake and without authority; correct?			document, which then was filed away.	
8	A That's right. And if you look at the		8	So we we, through the process of	
9	depositions, he testified of that, that he didn't			depositions and discovery, were able to find more	
10	remember signing them, and he didn't have a		10	information that Frank Waterhouse did not	
11	recollection, and Mr. Dondero never told him to		11	remember. He didn't remember signing but said his	
12	9 ,		12	signature is on there, so he must have signed it.	
13	he Mr. Dondero told him never told him		13	MR. MORRIS: All right. I move to	
14	shouldn't be didn't Mr. Dondero didn't tell		14	strike. My question is really, really	
15	him it was a note, and he never asked if it should		15	simple.	
16	be a note.		16	BY MR. MORRIS:	
17	With this this amended pleading,		17	Q Up until the time that you filed the	
18	the thought was he mistakenly thought it was a	'	18	motion last night, HCMFA's publicly stated	
19	note, because that was the practice for other		19	position has always been that Frank Waterhouse	
20	notes or other other transfers of this	4	20	signed the notes, and that he did so by mistake	
21	nature not of this nature, but other transfers		21	and without authority; correct?	
22	between companies, and so he had papered it up as	2	22	A Correct. It says it here:	
23	a note.	1	23	"Mr. Waterhouse made a mistake in preparing and	
24	But if you look at the depositions,		24	signing the notes for the defendant."	
25	you'll see that additional details came out that		25	Q Okay. Good enough.	
		Page 184			Page 185
1	Dustin Norris		1	Dustin Norris	
2	A And then it says: "Upon information"			consideration. We there were notes, but there	
3	Q That's			was no payment for those notes. The payment was	
4	A "and belief, Waterhouse was not aware		4	for compensation related to the NAV error, so	
5	that the payment from the plaintiff to defendant				
6			5	there was no payment or no compensation for	
7	were to compensate the defendant for the NAV			there was no payment or no compensation for notes that had been drafted.	
1	error."		6 7	notes that had been drafted. Q Okay. And the next defense there in	
8	•		6 7	notes that had been drafted.	
	error."		6 7	notes that had been drafted. Q Okay. And the next defense there in	
8	error." Q I'm sorry. Where are you reading from?		6 7 8	notes that had been drafted. Q Okay. And the next defense there in Paragraph 47 is "mutual mistake."	
8	error." Q I'm sorry. Where are you reading from? Oh, that's 44?		6 7 8 9	notes that had been drafted. Q Okay. And the next defense there in Paragraph 47 is "mutual mistake." Do you see that? A Correct. Q Do you have any facts that support that,	
8 9 10 11	error." Q I'm sorry. Where are you reading from? Oh, that's 44? A That's in number 44.		6 7 8 9	notes that had been drafted. Q Okay. And the next defense there in Paragraph 47 is "mutual mistake." Do you see that? A Correct.	
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3	2 answer date; correct? 3 A Well, you're saying you it was 4 before the answer date.	. ago .c
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1	Dustin Norris	1		
	email and this was used in depositions.	2	•	
3	There's an email that went – was David Klos	3	,	
4	instructing the group or instructing Kristin to	4		
5	send the cash and to record a note.	5	•	
6	Q And you believe that and it's HCMFA's	6		
′	contention that that document supports their	7	,	
8	position of mutual mistake. Do I have that right?	8	, , ,	
9	A Again, I'm not an attorney, so tying the	9		
10	definition as little M, I'm going to	10	1 /	
11	have to say I don't know.	11	, o	
12	Q Okay. Other than the emails, the two	12		
13	emails that you referenced and the JPEG documents,	13		
14	, , ,	14	., ., ., ., ., ., ., ., ., ., ., ., ., .	
15	May 1st March 1st, 2021, that supports or	15	,	
16	corroborates the defense of mutual mistake?	16	, ,	
17	A There may be a document. I I don't	17		
18	know.	18	•	
19	Q Okay.	19	•	
20	A And, again, as you've seen, there's a lot	20	•	
21	of stuff that's come out in discovery, and it's	2	•	
22	important that testimony of of those witnesses	22	•	
23	is taken into account.	23		
24	MR. MORRIS: Okay. Move to strike	24	•	
25	the last portion of that answer.	25	5 Q Okay. Is the sole basis for the assertion	
		ge 192	Duratio Marris	Page 193
1	Dustin Norris	1		
2	that Mr. Waterhouse lacked authority was that	2		
3	Mr. Dondero did not specifically approve it?	3		
4	A By nature, just the size of this note and	4	, ,	
5	the nature of it would have required Mr. Dondero's	5		
6	authority. And both Mr. Waterhouse and	6	B Q And so can you explain to me why, if it	
′	Mr. Dondero testified to that in their deposition.			
8		_	would have required his approval, nobody at HCMFA	
- 1	So I'd refer you to that. They both testified he	8	would have required his approval, nobody at HCMFA noticed that it was carried on HCMFA's books and	
9	did not have the authority.	8	would have required his approval, nobody at HCMFA noticed that it was carried on HCMFA's books and records as a liability since May of 2019?	
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10 11 12	did not have the authority. MR. MORRIS: I'm not sure that he did, so I'm going to move to strike. The testimony will be what the testimony will	8 9 10 12	would have required his approval, nobody at HCMFA noticed that it was carried on HCMFA's books and records as a liability since May of 2019? A Yeah. I think it's a simple mistake. There were other notes of a similar nature in size. And as Mr. Dondero testified, he wasn't	
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Ι.		Page 194			Page 195
1	Dustin Norris		1	Dustin Norris	
	we discovered in the discovery process. But		2	patience.	
_	Kristin Hendrix and Dave Klos and Frank Waterhouse		3	MR. RUKAVINA: And I'll just say,	
	made it very clear what the process and I would		4	John, that was a bit of a confusing	
	say why in answer to your question, it was		5	question.	
	probably a little sloppy. It may have cut		6	MR. MORRIS: Okay. And that's	
	corners. They should have received Mr. Dondero's		7	fair. Let me try again.	
	authorization, and they didn't. And so		8	BY MR. MORRIS:	
	that's that's our position.		9	Q Does HCMFA contest that Frank Waterhouse	
10	Q Does		10	knew, on May 2nd and May 3rd, 2019, that the	
11	A And I would say these are all		11	corporate accounting group was going to paper the	
	professionals. These are good people. I don't		12	transfers from Highland as loans?	
	think they were dishonest. I think they made a		13	A Did we contest that he knew that?	
	mistake. Professionals make mistakes, but this		14	Q Correct.	
	was a costly mistake.		15	A I think his testimony speaks I'll refer	
16	Q Did does does HCMFA contest that		16	you to his testimony. I think he testified that	
	Frank Waterhouse knew, on May 2nd and May 3rd,		17	he didn't know, right? He didn't know that	
	2019, that the corporate accounting group was		18	they yes, he was copied on an email, but he	
	going to paper these transactions as loans?		19	didn't have any recollection that they were	
20	A Again, I would refer you to the actual		20	papered up as a loan.	
	depositions and pleadings and our pleadings.		21	Q Okay. And on the basis of that testimony,	
	But our position is sorry. One more time, do		22	does HCMFA now contend that Mr. Waterhouse didn't	
23	you want to ask the question?		23	know, in May of 2019, that these transfers were	
24	Q Yeah. I think you need to I want to		24	papered as loans?	
25	try to finish up, and I really appreciate your		25	A I would say that's part of it. I would,	
1	Dustin Norris	Page 196	1	IN THE UNITED STATES BANKRUPTCY COURT	Page 197
				FOR THE NORTHERN DISTRICT OF TEXAS	
	again, refer you to all the pleadings, our pleadings and depositions that – of these		2	DALLAS DIVISION In re:)Chapter 11	
	individuals. There's there's a lot of support		3))	
	there.				
	ulele.		4	HIGHLAND CAPITAL MANAGEMENT, LP,)	
	O Dight		4 5	HIGHLAND CAPITAL MANAGEMENT, LP,))Case No. Debtor.)19-34054-SGJ-11	
	Q Right.		5)Case No. Debtor.)19-34054-SGJ-11)	
7	Have you seen the emails from May 2nd		5)Case No.	
7 8 a	Have you seen the emails from May 2nd and May 3rd?		5)Case No. Debtor.)19-34054-SGJ-11)	_
7 8 a 9	Have you seen the emails from May 2nd and May 3rd? A I can't remember if they were included in		5 6 7)Case No. Debtor.)19-34054-SGJ-11 HIGHLAND CAPITAL MANAGEMENT, LP,) Plaintiff,)	
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	Page 198		Page 199
	returned within 30 days from date of receipt of	1 ERRATA SHEET	
2	the transcript. If returned, the attached Changes	2 Case Name:	
3	and Signature Page contains any changes and the	3 Deposition Date:	
4	reasons therefor.	4 Deponent:	
5	was not requested by the deponent or a	5 Pg. No. Now Reads Should Read Reason	
6	party before the completion of the deposition.	6	
7	I further certify that I am neither attorney		
8	nor counsel for, related to, nor employed by any	7	I
9	of the parties to the action in which this	8	I
10	testimony was taken.	9	I
11	Further, I am not a relative or employee of	10	
12	any attorney of record in this cause, nor do I	11	
13	have a financial interest in the action.	12	
14	Subscribed and sworn to on this 1st day of	13	I
15	December, 2021.	14	I
16			I
17		15	
18		16	I
19		17	
20		18	
	Rebecca A. Graziano, CSR, RMR, CRR	19	
21	Texas CSR 9306	20	
	Expiration: 07/31/22	21	
22	California CSR 14407	22 Signature of Deponent	
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23	Illinois CSR 084.004659	23 THIS DAY OF, 2021.	
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25		25 (Notary Public) MY COMMISSION EXPIRES:	

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waited 157:16 187:8 189:15 wanted 143:22 wording 83:25 water 56:12 words 14:18 169:16 Waterhouse 12:3,23 work 31:20,24 43:19 13:3.6 14:10 15:5 96:3 111:19 112:14 24:9,17,22 25:4,11 113:16 114:2 117:14 39:5,7,13 41:14 42:5 118:6 119:15 146:23 43:15,24 44:22 60:4 164:25 165:4 168:11, 65:16 71:13 75:9,12, 21 178:13 179:20,21 24 78:22 80:14,22 180:7 81:25 82:24 83:23 worked 32:21 124:5 90:12 91:8,12 92:7, 13,16 93:17 96:20 working 33:2,8 97:23 98:12 99:16 41:11 56:8 72:5 100:9,13,16 140:12 112:22 115:11 142:23 144:25 117:20 135:16 151:19 161:16 146:10 178:18 180:4 165:13,19 167:8 works 5:23 171:8 173:24 175:2 176:19,25 177:4,15 world 49:9 104:6 181:7,13,24 182:2,6 126:24 186:23 183:10,19,23 184:4, 187:22 189:11 12 186:3,11 191:16, worth 160:10 18,22 192:2,6,16 193:14,19 194:3,17 writing 124:20 144:2 195:9,22 172:17 Waterhouse's 84:11 **written** 66:10 92:8 93:13.20 96:19 wrong 8:24 73:4 99:25 100:25 173:20 114:12 181:17 183:6 187:11 wrote 181:18 week 162:4 weeks 12:5 13:21 Υ 42:15 152:3 155:2 weighted 131:23 year 16:13 49:6 57:24 132:8 68:3 85:23 97:21 weighting 129:6,25 **year-end** 57:15 131:12 vears 18:21 76:18 Willmore 25:6 79:12 148:5,7 wishes 91:25 yesterday 9:13 54:19 193:25 withdrawn 35:13 55:22 80:5 82:12,13 **Yup** 52:19 54:5 70:11 92:14 109:10 117:11 86:4 92:4 127:21 122:18 127:4.5 133:22 158:6 168:16 witnesses 190:22 Ζ wondering 100:19 **Ziehl** 5:10 word 35:21 91:9 131:8 142:14 163:9, **Zoom** 12:4 15,16 165:2 183:6

EXHIBIT 193

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Page 1
1
      IN THE UNITED STATES BANKRUPTCY COURT
2
       FOR THE NORTHERN DISTRICT OF TEXAS
            DALLAS DIVISION
3
4
  IN RE:
                     ) Chapter 11
                           ) Case No.
  HIGHLAND CAPITAL
  MANAGEMENT, LP,
                           ) 19-34054-
6
         Debtor.
                     ) sgj11
  HIGHLAND CAPITAL
  MANAGEMENT, LP,
                           ) Adversary
8
                     Proceeding
         Plaintiff,
                     No.
                     21-03004
9
     VS.
10
  HIGHLAND CAPITAL
11 MANAGEMENT FUND ADVISORS, )
  LP,
12
         Defendant.
13 -----
14
15
16
17
     REMOTE ZOOM DEPOSITION OF DENNIS C. SAUTER
18
         Wednesday, November 17, 2021
19
20
21
22
23
   Reported by:
24
   Stacey L. Daywalt
   JOB NO. 202810
25
```

2 (All appearances via remote Zoom) 3 Wednesday, November 17, 2021 3 PACHULSKI STANG ZIEHL & JONES 5 Attorneys for Plaintiff 6 780 Third Avenue 7 Remote Zoom Deposition of DENNIS C. 7 New York, New York 10017	
4 1:08 p.m. 4 PACHULSKI STANG ZIEHL & JONES 5 Attorneys for Plaintiff 6 780 Third Avenue	
5 Attorneys for Plaintiff 6 780 Third Avenue	
6 780 Third Avenue	
7 Remote Zoom Deposition of DENNIS C. 7 New York, New York 10017	
8 SAUTER, held before Stacey L. Daywalt, a Court 8 BY: JOHN MORRIS, ESQ.	
9 Reporter and Notary Public of the District of 9	
0 Columbia. 10 MUNSCH HARDT KOPF & HARR	
1 Attorneys for Defendant	
2 12 500 North Akard Street	
3 Dallas, Texas 75201	
4 BY: DAVOR RUKAVINA, ESQ.	
5	
6 16 STINSON LLP	
7 Attorneys for James Dondero and Nancy	
8 18 Dondero	
9 19 3102 Oak Lawn Avenue	
20 Dallas, Texas 75219	
21 BY: MICHAEL AIGEN, ESQ.	
22 22	
23 ALSO PRESENT:	
24 24	
25 LA ASIA CANTY	
25 LA ASIA GANTI	
Page 4 1 D. Sauter 1 D. Sauter	Page 5
1 D. Sauter 2 DENNIS C. SAUTER, 1 D. Sauter 2 A. Idon't think so.	
3 called as a witness, having been 3 Q. Okay. So very simple ground rules.	
 4 duly sworn by a Notary Public, was examined and 5 testified as follows: 4 I'm going to ask you a series of 5 questions, and it's important that you allow me 	
9 Q. Can you please state your name for 9 A. Yes, sir.	
10 Q. And I will certainly attempt to do	
11 A. Dennis Sauter. 11 the same for you and insofar as I will 12 of tempt to allow you to finish your property.	
12 Q. Good afternoon, Mr. Sauter. My name 12 attempt to allow you to finish your answer 13 in John Marrie, I'm an attempt to allow you to finish your answer	
13 is John Morris. I'm an attorney at Pachulski 13 before I begin my question.	
A Chang Zight 9 James 10/2 are convenient the	
14 Stang Ziehl & Jones. We are counsel to the 14 But if I fail to do that, will you	
15 reorganized Highland Capital Management, LP. 15 let me know?	
 15 reorganized Highland Capital Management, LP. 15 let me know? 16 Are you aware of that? 16 A. I will. 	
 15 reorganized Highland Capital Management, LP. 16 Are you aware of that? 17 A. Yes, sir. 15 let me know? 16 A. I will. 17 Q. If there's anything that I ask you 	
15 reorganized Highland Capital Management, LP. 16 Are you aware of that? 17 A. Yes, sir. 18 Q. Okay. And we're here for your 18 that you don't understand, will you let me know	
15 reorganized Highland Capital Management, LP. 16 Are you aware of that? 16 A. I will. 17 A. Yes, sir. 18 Q. Okay. And we're here for your 19 deposition today. Correct? 15 let me know? 16 A. I will. 17 Q. If there's anything that I ask you 18 that you don't understand, will you let me know 19 that?	
15 reorganized Highland Capital Management, LP. 16 Are you aware of that? 16 A. I will. 17 A. Yes, sir. 18 Q. Okay. And we're here for your 19 deposition today. Correct? 20 A. Yes, sir. 21 let me know? 16 A. I will. 21 Q. If there's anything that I ask you 22 A. Yes, sir. 23 A. I will. 24 A. I will.	
15 reorganized Highland Capital Management, LP. 16 Are you aware of that? 17 A. Yes, sir. 18 Q. Okay. And we're here for your 19 deposition today. Correct? 20 A. Yes, sir. 21 Q. And I've examined you previously. 21 Is let me know? 16 A. I will. 17 Q. If there's anything that I ask you 18 that you don't understand, will you let me know 19 that? 20 A. I will. 21 Q. If you want to take a break at any	
15 reorganized Highland Capital Management, LP. 16 Are you aware of that? 16 A. I will. 17 A. Yes, sir. 18 Q. Okay. And we're here for your 19 deposition today. Correct? 20 A. Yes, sir. 20 A. I will. 21 Q. And I've examined you previously. 22 Is that right? 25 Is that right? 26 Are you aware of that? 27 Q. If there's anything that I ask you 18 that you don't understand, will you let me know 19 that? 20 A. I will. 21 Q. If you want to take a break at any 22 time, just let me know and I'll try to	
15 reorganized Highland Capital Management, LP. 16 Are you aware of that? 16 A. I will. 17 A. Yes, sir. 18 Q. Okay. And we're here for your 19 deposition today. Correct? 20 A. Yes, sir. 21 Q. And I've examined you previously. 22 Is that right? 23 A. I don't believe so. 25 Is that you don't understand, will you let me know 26 A. I will. 27 Q. If you want to take a break at any 28 time, just let me know and I'll try to 29 accommodate you. I'd only ask that you don't	
15 reorganized Highland Capital Management, LP. 16 Are you aware of that? 16 A. I will. 17 A. Yes, sir. 18 Q. Okay. And we're here for your 19 deposition today. Correct? 20 A. Yes, sir. 20 A. I will. 21 Q. And I've examined you previously. 22 Is that right? 25 Is that right? 26 Are you aware of that? 27 Q. If there's anything that I ask you 18 that you don't understand, will you let me know 19 that? 20 A. I will. 21 Q. If you want to take a break at any 22 time, just let me know and I'll try to	

1 D. Sauter		Page 6	1	D. Sauter	Page 7
2 A. That's fair.				Gruber until 2006.	
3 Q. Okay. Do yo	u have a license to		3	And I went in-house with a	
4 practice law, sir?	u have a licelise to			development firm called St. Ives Realty. I was	
5 A. I do.				there until 2009.	
	are you admitted to		6	And in 2009, I went back to work	
7 practice?	s are you admitted to		-	with the group I'd worked with before but now	
8 A. Just Texas.				it was called Langley Weinstein. I was with	
	u obtain your license?			Langley Weinstein until December 31 of '13.	
10 A. November of			10	And in 2014, I started at Wick	
11 Q. And did you				Phillips Gould & Martin, and I was at Wick	
12 school?	gradate normaw			Phillips until February of 2020 when I began at	
13 A. I did.				Nexpoint.	
	ou graduate from law		14	Q. And while you were at Nexpoint I	
15 school?	g. 30300 110111 1011			mean, withdrawn.	
16 A. Southern Me	thodist University.		16	While you were at Wick Phillips, did	
	describe for me your			you provide services to Highland or any of its	
•	rom the time you graduated			affiliates?	
9 law school until today	, ,		19	A. I provided services primarily to	
20 A. Sure.	•			Nexpoint advisors and its wholly owned	
	ool I began at a firm			subsidiaries.	
	nrest & Minick. And I was		22	I did have occasion to do a couple	
3 there just till tax day, s				of discrete engagements for I think they	
	ed to a firm at the time that	_ ا		were CLOs but managed by Highland.	
	ruber. I was at Godwin		25	Q. Prior to the time that you joined	
				q. The to the time that you join to	
D. Sautei		Page 8	1	D. Sauter	Page 9
2 Nexpoint, did you hav	e any particular expertise		2	counsel of Nexpoint?	
3 in a specified area of t			3	A. I don't recall exactly, but I would	
4 A. For about the			4 :	say April or May of this year.	
5 estate.	•		5	Q. All right. So from approximately	
6 It was, before t	hat, kind of a		0		
7 hybrid of construction				February of 2020 until approximately April of	
r riyona oi construction	related litigation,		6	February of 2020 until approximately April of 2021, you were the general counsel of real	
			6 7		
8 landlord-tenant disput	es, you know,		6 7 8	2021, you were the general counsel of real	
8 landlord-tenant disput 9 foreclosures. It was a	es, you know, Il real estate related		6 7 8 9	2021, you were the general counsel of real estate, and since approximately April of 2021	
8 landlord-tenant disput 9 foreclosures. It was a 0 litigation and then rea	es, you know, Il real estate related	1	6 7 8 9	2021, you were the general counsel of real estate, and since approximately April of 2021 you were you have been the general counsel	
8 landlord-tenant disput 9 foreclosures. It was a 0 litigation and then rea 1 work.	es, you know, Il real estate related I estate transactional	1	6 7 8 9 10	2021, you were the general counsel of real estate, and since approximately April of 2021 you were you have been the general counsel of Nexpoint.	
8 landlord-tenant disput 9 foreclosures. It was a 0 litigation and then rea 1 work. 2 Q. How did you	es, you know, Il real estate related	1	6 7 8 9 10	2021, you were the general counsel of real estate, and since approximately April of 2021 you were you have been the general counsel of Nexpoint. Do I have that right? A. Correct.	
8 landlord-tenant disput 9 foreclosures. It was a 0 litigation and then rea 1 work. 2 Q. How did you 3 by Nexpoint?	es, you know, Il real estate related I estate transactional	1 1 1 1 1	6 7 7 8 9 9 10 11 12 13	2021, you were the general counsel of real estate, and since approximately April of 2021 you were you have been the general counsel of Nexpoint. Do I have that right? A. Correct. Q. Was there a general counsel of	
8 landlord-tenant disput 9 foreclosures. It was a 0 litigation and then rea 1 work. 2 Q. How did you 3 by Nexpoint? 4 A. I had worked	es, you know, Il real estate related I estate transactional come to become employed with the folks here at	1 1 1 1 1 1	6 7 7 8 9 9 10 11 12 13 14	2021, you were the general counsel of real estate, and since approximately April of 2021 you were you have been the general counsel of Nexpoint. Do I have that right? A. Correct.	
8 landlord-tenant disput 9 foreclosures. It was a 0 litigation and then rea 1 work. 2 Q. How did you 3 by Nexpoint? 4 A. I had worked 5 Nexpoint for my entire	es, you know, Il real estate related I estate transactional come to become employed with the folks here at e tenure at Wick Phillips,	1 1 1 1 1 1 1	6 7 7 8 9 9 10 11 12 13 14	2021, you were the general counsel of real estate, and since approximately April of 2021 you were you have been the general counsel of Nexpoint. Do I have that right? A. Correct. Q. Was there a general counsel of Nexpoint during the time you served as general counsel of real estate?	
8 landlord-tenant dispute 9 foreclosures. It was a 0 litigation and then rea 1 work. 2 Q. How did you 3 by Nexpoint? 4 A. I had worked 5 Nexpoint for my entire 6 and they gave me an	es, you know, Il real estate related I estate transactional come to become employed with the folks here at e tenure at Wick Phillips, offer and I accepted.	1 1 1 1 1 1 1 1 1	6 7 2 8 9 1 1 1 1 1 1 1 1 1	2021, you were the general counsel of real estate, and since approximately April of 2021 you were you have been the general counsel of Nexpoint. Do I have that right? A. Correct. Q. Was there a general counsel of Nexpoint during the time you served as general counsel of real estate? A. There was not.	
8 landlord-tenant disput 9 foreclosures. It was a 0 litigation and then rea 1 work. 2 Q. How did you 3 by Nexpoint? 4 A. I had worked 5 Nexpoint for my entire 6 and they gave me an 7 Q. What offer di	es, you know, Il real estate related I estate transactional come to become employed with the folks here at e tenure at Wick Phillips,	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	6 7 2 8 9 9 110 111 112 113 114 115 116 117	2021, you were the general counsel of real estate, and since approximately April of 2021 you were you have been the general counsel of Nexpoint. Do I have that right? A. Correct. Q. Was there a general counsel of Nexpoint during the time you served as general counsel of real estate? A. There was not. Generally the way things worked is	
8 landlord-tenant disput 9 foreclosures. It was a 10 litigation and then rea 11 work. 12 Q. How did you 13 by Nexpoint? 14 A. I had worked 15 Nexpoint for my entire 16 and they gave me an 17 Q. What offer di 18 position?	es, you know, Il real estate related I estate transactional come to become employed with the folks here at e tenure at Wick Phillips, offer and I accepted. d they give you? What	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	6 7 2 8 9 9 10 111 112 113 114 115 116 117 118 1	estate, and since approximately April of 2021 you were you have been the general counsel of Nexpoint. Do I have that right? A. Correct. Q. Was there a general counsel of Nexpoint during the time you served as general counsel of real estate? A. There was not. Generally the way things worked is Scott Ellington was general counsel at Highland	
8 landlord-tenant dispute 9 foreclosures. It was a 0 litigation and then rea 1 work. 2 Q. How did you 3 by Nexpoint? 4 A. I had worked 5 Nexpoint for my entire 6 and they gave me an 7 Q. What offer di 8 position? 9 A. I was hired to	es, you know, Il real estate related I estate transactional come to become employed with the folks here at e tenure at Wick Phillips, offer and I accepted.	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	6 7 1 8 9 1 1 1 1 1 1 1 1 1	estate, and since approximately April of 2021 you were you have been the general counsel of Nexpoint. Do I have that right? A. Correct. Q. Was there a general counsel of Nexpoint during the time you served as general counsel of real estate? A. There was not. Generally the way things worked is Scott Ellington was general counsel at Highland Capital, and most of the legal department	
8 landlord-tenant dispute 9 foreclosures. It was a 0 litigation and then rea 1 work. 2 Q. How did you 3 by Nexpoint? 4 A. I had worked 5 Nexpoint for my entire 6 and they gave me an 7 Q. What offer di 8 position? 9 A. I was hired to 10 real estate.	es, you know, Il real estate related I estate transactional come to become employed with the folks here at e tenure at Wick Phillips, offer and I accepted. d they give you? What	1 1 1 1 1 1 1 1 2	6 7 7 8 9 9 9 110 111 112 113 114 115 116 117 118 119 120 12	estate, and since approximately April of 2021 you were you have been the general counsel of Nexpoint. Do I have that right? A. Correct. Q. Was there a general counsel of Nexpoint during the time you served as general counsel of real estate? A. There was not. Generally the way things worked is Scott Ellington was general counsel at Highland Capital, and most of the legal department reported to him. I was the one attorney that	
8 landlord-tenant dispute 9 foreclosures. It was a 0 litigation and then rea 1 work. 2 Q. How did you 3 by Nexpoint? 4 A. I had worked 5 Nexpoint for my entire 6 and they gave me an 7 Q. What offer did 8 position? 9 A. I was hired to 10 real estate. 11 Q. Are you still the	es, you know, Il real estate related I estate transactional come to become employed with the folks here at e tenure at Wick Phillips, offer and I accepted. d they give you? What	1 1 1 1 1 1 1 2 2 2 2	6 7 7 8 9 9 10 11 11 12 13 14 15 16 17 18 19 20 21 10 10 10 10 10 10	estate, and since approximately April of 2021 you were you have been the general counsel of Nexpoint. Do I have that right? A. Correct. Q. Was there a general counsel of Nexpoint during the time you served as general counsel of real estate? A. There was not. Generally the way things worked is Scott Ellington was general counsel at Highland Capital, and most of the legal department reported to him. I was the one attorney that was not under him.	
8 landlord-tenant dispute 9 foreclosures. It was a 10 litigation and then rea 11 work. 12 Q. How did you 13 by Nexpoint? 14 A. I had worked 15 Nexpoint for my entire 16 and they gave me an 17 Q. What offer did 18 position? 19 A. I was hired to 20 real estate. 21 Q. Are you still the	es, you know, Il real estate related I estate transactional come to become employed with the folks here at e tenure at Wick Phillips, offer and I accepted. d they give you? What be general counsel of	1 1 1 1 1 1 1 1 2 2 2	6 7 7 8 9 9 9 110 111 112 113 114 115 116 117 118 119 120 12	estate, and since approximately April of 2021 you were you have been the general counsel of Nexpoint. Do I have that right? A. Correct. Q. Was there a general counsel of Nexpoint during the time you served as general counsel of real estate? A. There was not. Generally the way things worked is Scott Ellington was general counsel at Highland Capital, and most of the legal department reported to him. I was the one attorney that was not under him. So no, there was not.	
8 landlord-tenant dispute 9 foreclosures. It was a 10 litigation and then rea 11 work. 12 Q. How did you 13 by Nexpoint? 14 A. I had worked 15 Nexpoint for my entire 16 and they gave me an 17 Q. What offer did 18 position? 19 A. I was hired to 20 real estate. 21 Q. Are you still the	es, you know, Il real estate related I estate transactional come to become employed with the folks here at e tenure at Wick Phillips, offer and I accepted. d they give you? What be general counsel of	11 11 11 11 12 22 22 22 22	6 7 8 9 9 110 111 112 113 114 115 116 117 118 119 120 121 122 122 122 122 122 123 124 125	estate, and since approximately April of 2021 you were you have been the general counsel of Nexpoint. Do I have that right? A. Correct. Q. Was there a general counsel of Nexpoint during the time you served as general counsel of real estate? A. There was not. Generally the way things worked is Scott Ellington was general counsel at Highland Capital, and most of the legal department reported to him. I was the one attorney that was not under him.	

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18		
20	THE REPORTER: Please watch the	
21	overlap of talking. Thank you.	
22	BY MR. MORRIS:	
23	Q. Mr. Sauter, Mr. Rukavina brings up a	
24	good point.	
25	Are you also the general counsel of	
ge 12		Page 13
1	D. Sauter	
2		
3		
4	•	
5		
6		
7	A di ricare and the whally average autoridiaries of	
I	Advisors and the wholly owned subsidiaries of	
8	Nexpoint Advisors as the affiliated entities.	
8 9		
8 9 10	Nexpoint Advisors as the affiliated entities.	
	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities,	
10	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well.	
10 11	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well. Q. Is there a source of affiliation	
10 11 12	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well. Q. Is there a source of affiliation between Nexpoint and HCMFA?	
10 11 12 13	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well. Q. Is there a source of affiliation between Nexpoint and HCMFA?	
10 11 12 13 14	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well. Q. Is there a source of affiliation between Nexpoint and HCMFA? A. Yes, Mr. Dondero.	
10 11 12 13 14 15	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well. Q. Is there a source of affiliation between Nexpoint and HCMFA? A. Yes, Mr. Dondero. Q. And he controls them both to the	
10 11 12 13 14 15	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well. Q. Is there a source of affiliation between Nexpoint and HCMFA? A. Yes, Mr. Dondero. Q. And he controls them both to the best of your knowledge. Is that right?	
10 11 12 13 14 15 16	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well. Q. Is there a source of affiliation between Nexpoint and HCMFA? A. Yes, Mr. Dondero. Q. And he controls them both to the best of your knowledge. Is that right? A. I – I guess it depends on how you define "control."	
10 11 12 13 14 15 16 17 18	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well. Q. Is there a source of affiliation between Nexpoint and HCMFA? A. Yes, Mr. Dondero. Q. And he controls them both to the best of your knowledge. Is that right? A. I – I guess it depends on how you define "control." But yes, he is a controlling person	
10 11 12 13 14 15 16 17 18 19 20	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well. Q. Is there a source of affiliation between Nexpoint and HCMFA? A. Yes, Mr. Dondero. Q. And he controls them both to the best of your knowledge. Is that right? A. I – I guess it depends on how you define "control." But yes, he is a controlling person of Nexpoint Advisors, and yes, for all intents	
10 11 12 13 14 15 16 17 18	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well. Q. Is there a source of affiliation between Nexpoint and HCMFA? A. Yes, Mr. Dondero. Q. And he controls them both to the best of your knowledge. Is that right? A. I – I guess it depends on how you define "control." But yes, he is a controlling person of Nexpoint Advisors, and yes, for all intents and purposes, he's the controlling person of	
10 11 12 13 14 15 16 17 18 19 20 21 22	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well. Q. Is there a source of affiliation between Nexpoint and HCMFA? A. Yes, Mr. Dondero. Q. And he controls them both to the best of your knowledge. Is that right? A. I – I guess it depends on how you define "control." But yes, he is a controlling person of Nexpoint Advisors, and yes, for all intents and purposes, he's the controlling person of HCMFA.	
10 11 12 13 14 15 16 17 18 19 20 21	Nexpoint Advisors as the affiliated entities. HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well. Q. Is there a source of affiliation between Nexpoint and HCMFA? A. Yes, Mr. Dondero. Q. And he controls them both to the best of your knowledge. Is that right? A. I – I guess it depends on how you define "control." But yes, he is a controlling person of Nexpoint Advisors, and yes, for all intents and purposes, he's the controlling person of HCMFA. Q. Okay. And can we refer to HCMFA and	
	13 14 15 16 17 18 19 20 21 22 23 24 25 ge 12 1 2 3 4 5	1 D. Sauter 2 defense of the lawsuit that Highland has 3 commenced against it? 4 MR. RUKAVINA: Allow me to interject 5 just a little bit here, John. 6 You subpoenaed Mr. Sauter in the 7 HCMFA lawsuit. 8 Why are you asking him all about 9 this Nexpoint? 10 MR. MORRIS: Just because he told me 11 that's where he works. 12 MR. RUKAVINA: Yeah, that's fine. 13 I mean, I'm not trying to be rude. 14 Just – 15 MR. MORRIS: I appreciate that. 16 MR. RUKAVINA: — if you're — 17 (Simultaneous crosstalk.) 18 MR. MORRIS: Duly noted. Thank you, 19 Davor. 20 THE REPORTER: Please watch the 21 overlap of talking. Thank you. 22 BY MR. MORRIS: 23 Q. Mr. Sauter, Mr. Rukavina brings up a 24 good point. 25 Are you also the general counsel of ge 12 1 D. Sauter 2 expertise, people bring it to me and I work on 3 it. 4 Q. And what's an "affiliated entity" in 5 the way that you've used that term? 6 A. I generally refer to HCMFA, Nexpoint

1 D. Sauter	Page 14	1 D. Sauter	Page 15
2 A. That's fine.		2 discrete business line. They're separate	
3 Q. The advisors are each advisory		3 entities, but not necessarily funds.	
4 firms. Is that right?		4 Q. And are each of them owned	
5 A. Correct.		5 indirectly or directly by Nexpoint Advisors,	
6 Q. And each of them provide advisory		6 LP?	
7 services to certain funds. Is that correct?		7 A. Yes, sir.	
8 A. Correct.		8 Q. Okay.	
9 Q. Okay. Do you hold any titles with		9 When did you first meet Mr. Dondero?	
10 any of the funds that are advised by either of		0 A. I don't recall.	
11 the advisors?		1 I think I met him once at an event	
12 A. Yes, I am general counsel for		2 that I was invited to years ago, maybe 2017.	
13 Nexpoint Residential Trust and I'm general		3 Q. Do you know if he holds a title at	
14 counsel of Nexpoint Real Estate Finance.		4 HCMFA?	
15 Q. Any others?		5 A. I don't believe he does.	
16 A. No, sir.		6 Q. How about Nexpoint? Does he hold a	
17 Q. Okay. Do you have		7 title at Nexpoint?	
18 A. Wait. Wait. Let me clarify.		8 A. Yes, he's the president.	
19 I think I am general counsel of		9 Q. And even though he doesn't hold a	
20 Nexpoint Real Estate Advisors, and I may be		20 title at HCMFA, it's your understanding that he	
21 general counsel of each of them. I think there		21 controls HCMFA. Is that right?	
22 are nine in total.		22 A. I don't know that I would say that.	
23 Q. Okay. And are each of them separate		23 And again, I would need to look at	
24 funds?		24 the organizational documents.	
25 A. Each of the advisors are manage a		25 Q. Well, as – withdrawn.	
	Page 16		Page 17
1 D. Sauter		1 D. Sauter	
2 Do you know if Mr. Dondero serves as		2 manager of GAF was in 2019?	
3 the portfolio manager for any of the funds to		3 A. Ido not.	
4 which the advisors provide advisory services?		4 Q. Do you know if it was Mr. Dondero?	
5 A. He does.		5 A. I do not.	
6 I don't know which ones.		6 Q. In the course of your investigation,	
7 Q. We're going to talk in a little		7 did you ever ask who the portfolio manager of	
8 while about a TerreStar NAV issue.		8 GAF was?	
9 MR. MORRIS: And Stacey, that's all		9 A. I did not.	
10 caps N-A-V, and it's T-E-R-R-A-S-T-A-R [sic].		Q. Do you know Frank Waterhouse?	
11 Q. We're going to talk a little bit12 about a TerreStar NAV issue.		1 A. Ido.	
		2 Q. When did you first meet	
13 Are you generally familiar with		3 Mr. Waterhouse?	
14 that?		4 A. I think I met him just before I came	
15 A. Generally.		5 on. It would have been maybe December of 2019.	
16 Q. Okay. And is it your understanding		6 Q. Okay. Do you know if Mr. Waterhouse	
17 that that NAV issue, that TerreStar NAV issue,		7 holds any titles with either of the advisors?	
18 related to certain equity positions that were		8 A. I believe so, but I'm not exactly	
19 held by certain funds managed by HCMFA?		9 sure.	
		20 MR. RUKAVINA: I'm going to object	
20 A. Yes, I think it was Global		0 0 ,	
20 A. Yes, I think it was - Global21 Allocation Fund is the one that was	2	21 to vague or form there.	
 A. Yes, I think it was Global Allocation Fund is the one that was particularly the insured. 	2	to vague or form there. What time are you specifying,	
 A. Yes, I think it was – Global Allocation Fund is the one that was particularly the insured. Q. And can we refer to that as GAF? 	2 2 2 2	to vague or form there. What time are you specifying, Mr. Morris?	
 A. Yes, I think it was Global Allocation Fund is the one that was particularly the insured. 	2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	to vague or form there. What time are you specifying,	

1 D. Sauter	Page 18	1	D. Sauter	Page 19
2 BY MR. MORRIS:		2	Q. Do you have any understanding as to	
3 Q. Mr. Sauter, do you know if			when Mr. Waterhouse became the treasurer and/or	
4 Mr. Waterhouse held any position with either of			the CFO of HCMFA?	
5 the advisors at any time in 2019?		5	A. I do not.	
6 A. I believe he did, but I - I would		6	Q. Do you know if Mr. Waterhouse holds	
7 say it was probably treasurer and CFO, but I'm			any positions with any of the funds that are	
8 speculating.			advised by either of the advisors?	
9 Q. In the course of your investigation,		9	A. I believe he I'm speculating. I	
10 did you try to determine what title			don't know for certain.	
11 Mr. Waterhouse held with HCMFA?		11	Q. During the course of your you	
12 A. I have not.			conducted an investigation around the TerreStar	
			_	
13 Q. Have you ever tried to determine14 what title Mr. Waterhouse held at HCMFA at any		13 14	NAV issue. Right? A. Correct.	
•			Q. Okay. During the course of your	
15 time?		15 16	, ,	
16 A. At one point I knew what it is. I			investigation, did you ever try to determine	
17 just can't recall.			whether Mr. Waterhouse served in any capacity	
18 Q. Okay. Does do you know if			with any of the funds that are managed by	
19 Mr. Waterhouse holds a position with HCMFA			HCMFA?	
20 today?		20	A. Whether he yes.	
21 A. I believe he does.		21	Q. And what did you what information	
22 Q. Do you have any understanding as to		22	did you learn in the course of your	
23 what that position is?		23	investigation on that issue?	
24 A. Again, I think it's CFO and/or		24	A. My understanding is that the	
25 treasurer. That's consistent, I think.	2	25	valuation team was a subset of the group that	
1 D. Sauter	Page 20	1	D. Sauter	Page 21
2 Mr. Waterhouse ran.		2	Q. Okay. And what's the basis for that	
	I .	2	Q. Okay. And what's the basis for that	
			•	
3 Q. Right.			speculation?	
Q. Right.I'm asking you specifically about		3 4	speculation? A. Because he's at Skyview, and I think	
 Q. Right. I'm asking you specifically about whether he held positions at any of the funds. 		3 4 5	speculation? A. Because he's at Skyview, and I think all of the employees that were at Nexpoint	
 Q. Right. I'm asking you specifically about whether he held positions at any of the funds. Did you understand that when I asked 		3 4 5 6	speculation? A. Because he's at Skyview, and I think all of the employees that were at Nexpoint Advisors or HCMFA remained where they were.	
 Q. Right. I'm asking you specifically about whether he held positions at any of the funds. Did you understand that when I asked my question? 		3 4 5 6 7	speculation? A. Because he's at Skyview, and I think all of the employees that were at Nexpoint Advisors or HCMFA remained where they were. Q. Do you know what position he held at	
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1 D. Sauter	Page 22	D. Sauter	Page 23
2 A. Idon't know.	2		
3 Q. And is it your understanding that he			
4 was part of a valuation team?			
5 I think you used that term.		•	
6 A. Yes, I believe he was.			
7 Q. Okay. And what's the basis for that	-	,	
8 understanding on your part?	8		
9 A. Discussions that I've had with Frank			
10 and his knowledge of the TerreStar NAV error.	1		
11 Q. Did Mr. Mabry tell you that he was	1		
12 part of the valuation team?	1		
13 A. I don't recall.	1	3 A. Yes, sir.	
14 Q. Did you ask him?	1		
15 A. I don't recall.	1		
16 Q. Do you know if Mr. Mabry played any	1		
17 role in any aspect of the TerreStar	1		
18 investigation that was conducted by the SEC?	1		
19 A. I don't know.	1		
Q. Did you ask Mr. Mabry if he played	2	you every opportunity that you believe you need	
21 any role in connection with the SEC	2	1 in order to read the document.	
22 investigation?	2	2 So you know, if there's something	
23 A. I did not.	2	3 that I put up there that you want to see more	
Q. Do you know if Mr. Mabry played any	2	4 of, just let me know and we'll just scroll	
25 role in formulating HCMFA's response to the	2	5 around. Okay?	
	Page 24		Page 25
1 D. Sauter	'	D. Sauter	
2 A. Okay.		Q. And is it fair to say that your	
A. Okay.(Exhibit 181, Declaration of Dennis	3	Q. And is it fair to say that your declaration describes the investigation that	
 A. Okay. (Exhibit 181, Declaration of Dennis C. Sauter, Jr., previously marked for 		Q. And is it fair to say that your declaration describes the investigation that you did initially after the complaint was filed	
 A. Okay. (Exhibit 181, Declaration of Dennis C. Sauter, Jr., previously marked for identification.) 	2	Q. And is it fair to say that your declaration describes the investigation that you did initially after the complaint was filed and then basically a second phase of the	
 A. Okay. (Exhibit 181, Declaration of Dennis C. Sauter, Jr., previously marked for identification.) Q. Okay. Do you see the first page of 	2 3 4 5 6 6	Q. And is it fair to say that your declaration describes the investigation that you did initially after the complaint was filed and then basically a second phase of the investigation after Mr. Waterhouse and	
 A. Okay. (Exhibit 181, Declaration of Dennis C. Sauter, Jr., previously marked for identification.) Q. Okay. Do you see the first page of this document states that it's your 	2 3 4 6	Q. And is it fair to say that your declaration describes the investigation that you did initially after the complaint was filed and then basically a second phase of the investigation after Mr. Waterhouse and Mr. Mabry migrated from Highland?	
A. Okay. (Exhibit 181, Declaration of Dennis C. Sauter, Jr., previously marked for identification.) Q. Okay. Do you see the first page of this document states that it's your declaration?	2 3 4 5 6	Q. And is it fair to say that your declaration describes the investigation that you did initially after the complaint was filed and then basically a second phase of the investigation after Mr. Waterhouse and Mr. Mabry migrated from Highland? A. Yes.	
A. Okay. (Exhibit 181, Declaration of Dennis C. Sauter, Jr., previously marked for identification.) Q. Okay. Do you see the first page of this document states that it's your declaration? A. I do.	2 3 4 6 7 8	Q. And is it fair to say that your declaration describes the investigation that you did initially after the complaint was filed and then basically a second phase of the investigation after Mr. Waterhouse and Mr. Mabry migrated from Highland? A. Yes. Q. Okay. So the purpose of your	
A. Okay. (Exhibit 181, Declaration of Dennis C. Sauter, Jr., previously marked for identification.) Q. Okay. Do you see the first page of this document states that it's your declaration? A. I do. Q. And if we can go to the signature	2 3 4 5 6 7 8 9	Q. And is it fair to say that your declaration describes the investigation that you did initially after the complaint was filed and then basically a second phase of the investigation after Mr. Waterhouse and Mr. Mabry migrated from Highland? A. Yes. Q. Okay. So the purpose of your investigation was to understand the origin of	
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A. Okay. (Exhibit 181, Declaration of Dennis C. Sauter, Jr., previously marked for identification.) Q. Okay. Do you see the first page of this document states that it's your declaration? A. I do. Q. And if we can go to the signature line, please. And that's your signature there, sir? A. It is. Q. And did you sign this on or about	2 3 4 5 6 7 8 9 1 1 1 1 1	Q. And is it fair to say that your declaration describes the investigation that you did initially after the complaint was filed and then basically a second phase of the investigation after Mr. Waterhouse and Mr. Mabry migrated from Highland? A. Yes. Q. Okay. So the purpose of your investigation was to understand the origin of two promissory notes. Right? A. Yes, sir. Q. Okay. I just want to go through to the notes to make sure that the record is clear that we're talking about the same thing.	
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A. Okay. (Exhibit 181, Declaration of Dennis C. Sauter, Jr., previously marked for identification.) Q. Okay. Do you see the first page of this document states that it's your declaration? A. I do. Q. And if we can go to the signature line, please. And that's your signature there, sir? A. It is. Q. And did you sign this on or about May 21st, 2021? A. Yes, sir. Q. Do you remember the purpose of this declaration? A. It was requesting to file an amended answer.	2 3 4 5 6 7 8 9 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	Q. And is it fair to say that your declaration describes the investigation that you did initially after the complaint was filed and then basically a second phase of the investigation after Mr. Waterhouse and Mr. Mabry migrated from Highland? A. Yes. Q. Okay. So the purpose of your investigation was to understand the origin of two promissory notes. Right? A. Yes, sir. Q. Okay. I just want to go through to the notes to make sure that the record is clear that we're talking about the same thing. There are certain documents that we've used in other depositions so they've been premarked, and I'd ask Ms. Canty to put up the document that's already been marked as Exhibit 54. MS. CANTY: Okay. John, do you want	
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1	D. Sauter	Page 26	1	D. Sauter	Page 27
1	attachment dated 5/2/19, D-CNL003777-779,		2	D. Sauter I can't recall receiving one from	
3	previously marked for identification.)		3	them either.	
4	Q. So if could just scroll down a		4	Q. Do you see that in this e-mail	
5	little bit.		5	Mr. Klos asks to have \$2.4 million transferred	
				from HCMLP to HCMFA?	
6	Do you see there's do you see it's there's an e-mail from David Klos dated		6	A. Ido.	
0			7		
8	May 2nd?		8	Q. And do you see that he states:"This is a new interco loan"?	
9	A. Yes.		9		
10	Q. Do you know who Mr. Klos is?		10	A. Ido.	
11	A. Ido.		11	Q. And if we can see the response	
12	Q. And who do you understand Mr. Klos		12	above, do you see how Ms do you know	
13	to be? What role did he play in May of 2019?		13	Kristin Hendrix?	
14	A. I don't know.		14	A. Ido.	
15	I know he worked under Frank.		15	Q. And who is Ms. Hendrix, to the best	
16	Q. He worked out of do you see		16	of your knowledge.	
17			17	A. I believe she worked under Mr. Klos.	
18	group?		18	Q. And do you see that she wrote to	
19	A. Yes.		19	someone named Blair and attached a copy of a	
20	Q. Have you ever sent or received an		20	note?	
21	e-mail from a Highland corporate accounting		21	A. Yes.	
22	e-mail chain called the corporate accounting		22	Q. Okay.	
23	group?		23	A. That's what it says.	
24	A. I've never sent an e-mail from the		24	Q. And can we go to the next page,	
25	corporate accounting group.		25	please.	
		Page 28			Page 29
1	D. Sauter		1	D. Sauter	
2	And do you see that this is a		2	A. Yes.	
3	promissory note for \$2.4 million dated May 2,		3	Q. Okay. Let's look at the next note,	
4	2019?		4	please.	
5	A. I do.		5	(Exhibit 57, Promissory Note dated	
6	Q. Okay. And can we go to the		6	5/3/19, D-CNL003764-65, previously marked for	
7	signature line.				
8	D M M// 1 1			identification.)	
	Do you see Mr. Waterhouse's		7 8	Do you see this is a note for	
9	signature?			Do you see this is a note for \$5 million and it's dated the next day,	
	signature? Do you see Mr. Waterhouse's		8 9 10	Do you see this is a note for	
10	signature? Do you see Mr. Waterhouse's signature, sir?		8 9	Do you see this is a note for \$5 million and it's dated the next day, May 3rd, 2019? A. I see that.	
9 10 11 12	signature? Do you see Mr. Waterhouse's signature, sir? A. I can't verify whether that's his		8 9 10	Do you see this is a note for \$5 million and it's dated the next day, May 3rd, 2019? A. I see that. Q. Do you see that it's it also	
10 11	signature? Do you see Mr. Waterhouse's signature, sir? A. I can't verify whether that's his signature, but I'll take your word for it.		8 9 10 11	Do you see this is a note for \$5 million and it's dated the next day, May 3rd, 2019? A. I see that.	
10 11 12 13	signature? Do you see Mr. Waterhouse's signature, sir? A. I can't verify whether that's his		8 9 10 11 12	Do you see this is a note for \$5 million and it's dated the next day, May 3rd, 2019? A. I see that. Q. Do you see that it's it also	
10 11 12	signature? Do you see Mr. Waterhouse's signature, sir? A. I can't verify whether that's his signature, but I'll take your word for it.		8 9 10 11 12 13	Do you see this is a note for \$5 million and it's dated the next day, May 3rd, 2019? A. I see that. Q. Do you see that it's it also defines as the maker Highland Capital	
10 11 12 13 14	signature? Do you see Mr. Waterhouse's signature, sir? A. I can't verify whether that's his signature, but I'll take your word for it. Q. Okay. Can you go to the top of the		8 9 10 11 12 13 14	Do you see this is a note for \$5 million and it's dated the next day, May 3rd, 2019? A. I see that. Q. Do you see that it's it also defines as the maker Highland Capital Management Fund Advisors, LP?	
10 11 12 13 14 15	signature? Do you see Mr. Waterhouse's signature, sir? A. I can't verify whether that's his signature, but I'll take your word for it. Q. Okay. Can you go to the top of the note, please.		8 9 10 11 12 13 14 15	Do you see this is a note for \$5 million and it's dated the next day, May 3rd, 2019? A. I see that. Q. Do you see that it's it also defines as the maker Highland Capital Management Fund Advisors, LP? A. That's what it says on the first	
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10 11 12 13 14 15 16 17	signature? Do you see Mr. Waterhouse's signature, sir? A. I can't verify whether that's his signature, but I'll take your word for it. Q. Okay. Can you go to the top of the note, please. Do you see that the maker is defined to be Highland Capital Management Fund		8 9 10 11 12 13 14 15 16 17	Do you see this is a note for \$5 million and it's dated the next day, May 3rd, 2019? A. I see that. Q. Do you see that it's it also defines as the maker Highland Capital Management Fund Advisors, LP? A. That's what it says on the first page, yes. Q. Okay. And if we can go to the	
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10 11 12 13 14 15 16 17 18 19 20	signature? Do you see Mr. Waterhouse's signature, sir? A. I can't verify whether that's his signature, but I'll take your word for it. Q. Okay. Can you go to the top of the note, please. Do you see that the maker is defined to be Highland Capital Management Fund Advisors, LP? A. I do see that that's what it says on		8 9 10 11 12 13 14 15 16 17 18 19	Do you see this is a note for \$5 million and it's dated the next day, May 3rd, 2019? A. I see that. Q. Do you see that it's it also defines as the maker Highland Capital Management Fund Advisors, LP? A. That's what it says on the first page, yes. Q. Okay. And if we can go to the signature line. Again, does that appear to be	
10 11 12 13 14 15 16 17 18 19 20 21	signature? Do you see Mr. Waterhouse's signature, sir? A. I can't verify whether that's his signature, but I'll take your word for it. Q. Okay. Can you go to the top of the note, please. Do you see that the maker is defined to be Highland Capital Management Fund Advisors, LP? A. I do see that that's what it says on the first page. Q. Okay. And this is one of the two		8 9 10 11 12 13 14 15 16 17 18 19 20	Do you see this is a note for \$5 million and it's dated the next day, May 3rd, 2019? A. I see that. Q. Do you see that it's it also defines as the maker Highland Capital Management Fund Advisors, LP? A. That's what it says on the first page, yes. Q. Okay. And if we can go to the signature line. Again, does that appear to be Mr. Waterhouse's signature? A. Again, I can't verify whether that's	
10 11 12 13 14 15 16 17 18 19 20 21 22	signature? Do you see Mr. Waterhouse's signature, sir? A. I can't verify whether that's his signature, but I'll take your word for it. Q. Okay. Can you go to the top of the note, please. Do you see that the maker is defined to be Highland Capital Management Fund Advisors, LP? A. I do see that that's what it says on the first page. Q. Okay. And this is one of the two notes that was the source of your		8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Do you see this is a note for \$5 million and it's dated the next day, May 3rd, 2019? A. I see that. Q. Do you see that it's it also defines as the maker Highland Capital Management Fund Advisors, LP? A. That's what it says on the first page, yes. Q. Okay. And if we can go to the signature line. Again, does that appear to be Mr. Waterhouse's signature? A. Again, I can't verify whether that's Mr. Waterhouse's signature or not.	
10 11 12 13 14 15 16 17 18	signature? Do you see Mr. Waterhouse's signature, sir? A. I can't verify whether that's his signature, but I'll take your word for it. Q. Okay. Can you go to the top of the note, please. Do you see that the maker is defined to be Highland Capital Management Fund Advisors, LP? A. I do see that that's what it says on the first page. Q. Okay. And this is one of the two		8 9 10 11 12 13 14 15 16 17 18 19 20 21	Do you see this is a note for \$5 million and it's dated the next day, May 3rd, 2019? A. I see that. Q. Do you see that it's it also defines as the maker Highland Capital Management Fund Advisors, LP? A. That's what it says on the first page, yes. Q. Okay. And if we can go to the signature line. Again, does that appear to be Mr. Waterhouse's signature? A. Again, I can't verify whether that's	

- 1	Page D. Sauter	30 1	D. Sauter	Page 31
1	Q. Lunderstand.	2	BY MR. MORRIS:	
3	But the definition of "maker" is	3	Q. All right. We're going to refer to	
4	above. Correct?	4	these two notes collectively as "the notes."	
5	A. I wouldn't that's not how I would	5	Is that okay?	
6	draft a promissory note.	6	A. That's fine.	
7	Q. I didn't ask you how you would draft	7	Q. And these are the two notes that you	
8	it.		were investigating. Right?	
9	I'm just asking you whether, having	8 9	A. Yes.	
10	just looked at the document and as a lawyer	10		
11	admitted to practice in law, would you agree	11		
12	that the term "maker" is a defined term in this	12		
		13		
13	document?			
14	MR. RUKAVINA: I'll just object to form here and also that this witness has not	14	3 ,	
15 16		15		
16 17	been called as an expert, even though he's a	16	1 1 7 1	
17 10	lawyer.	17	9	
18	So I'll just preserve that for the	18		
19	record.	19	9	
20	MR. MORRIS: Fair. That's fine.	20	,	
21	THE WITNESS: I would agree that	21	was filed and the time that HCMFA filed its	
22	"maker" is defined on the first page, but that	22	3	
23	would be an improper signature block, if it was	23	, and the second se	
24	intended to be Highland Capital Management Fund	24		
25	Advisors.	25	Q. And during that initial	
1	Page D. Sauter		D.O. <i>i</i>	Page 33
1	D. Saulei			
2		1	D. Sauter	
2	investigation, you spoke with Jim Dondero.	2	that right?	
3	investigation, you spoke with Jim Dondero. Correct?	3	that right? A. He couldn't recall the genesis,	
4	investigation, you spoke with Jim Dondero. Correct? A. I did.	2 3 4	that right? A. He couldn't recall the genesis, correct.	
	investigation, you spoke with Jim Dondero. Correct? A. I did. Q. Okay. And according to	2 3 4 5	that right? A. He couldn't recall the genesis, correct. Q. Did he have any recollection at all	
4 5 6	investigation, you spoke with Jim Dondero. Correct? A. I did. Q. Okay. And according to Paragraph 13, he couldn't recall the genesis of	2 3 4 5 6	that right? A. He couldn't recall the genesis, correct. Q. Did he have any recollection at all as to what the notes related to?	
4 5 6 7	investigation, you spoke with Jim Dondero. Correct? A. I did. Q. Okay. And according to Paragraph 13, he couldn't recall the genesis of the notes. Is that right?	2 3 4 5 6 7	that right? A. He couldn't recall the genesis, correct. Q. Did he have any recollection at all as to what the notes related to? A. I don't – I don't believe so,	
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4 5 6 7 8 9 10 11 12	investigation, you spoke with Jim Dondero. Correct? A. I did. Q. Okay. And according to Paragraph 13, he couldn't recall the genesis of the notes. Is that right? A. That's correct. Q. Did you show him the notes? A. I don't recall. Q. Did you tell him that the notes were dated May 2nd and May 3rd, 2019?	2 3 4 5 6 7 8 9 10 11	that right? A. He couldn't recall the genesis, correct. Q. Did he have any recollection at all as to what the notes related to? A. I don't — I don't believe so, because if he had, then I would have been able to pin it down further. Q. How many conversations did you have with Mr. Dondero as part of your initial investigation?	
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4 5 6 7 8 9 10 11 12 13 14 15	investigation, you spoke with Jim Dondero. Correct? A. I did. Q. Okay. And according to Paragraph 13, he couldn't recall the genesis of the notes. Is that right? A. That's correct. Q. Did you show him the notes? A. I don't recall. Q. Did you tell him that the notes were dated May 2nd and May 3rd, 2019? A. I don't recall that either. Q. Did you do anything to try to refresh his recollection about the timing of the notes? A. I'm sure I did. But I don't recall that conversation in any detail as I'm sitting here today. Q. Did you tell him the principal amount of the notes? A. Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 20 21 22	that right? A. He couldn't recall the genesis, correct. Q. Did he have any recollection at all as to what the notes related to? A. I don't – I don't believe so, because if he had, then I would have been able to pin it down further. Q. How many conversations did you have with Mr. Dondero as part of your initial investigation? A. I don't recall. Two, three. Q. Was there anybody present other than the two of you? A. Again, I don't recall. Q. Do you recall if they took place on the phone or were they in person? A. It would have been in person. Q. And why do you say it would have been in person? A. Well, now that you say that, no, it probably wasn't in person because he would not	

1	Page 34 D. Sauter	1	D. Sauter	Page 35
2	There was obviously a lot of things	2	Q. Do you have a recollection of	
3	going on at this point. Mr. Dondero had been	3	speaking to Mr. Norris, or are you just	
4	evicted from the building, and so that made	4	surmising that you probably did?	
5	I shouldn't say evicted. He'd been kicked out	5	A. I'm surmising that I probably would	
6	by the debtor, and so that made our	6	have.	
7	communications a little more difficult.	7	There was a lot, again, that was	
8	So I would have spoken with him on	8	happening. I didn't have the historical	
-	·			
9	the phone because I did not go over to the	9	knowledge of these things, and so I talked with	
10	NexBank office very often.	10	Mr. Post and Mr. Norris daily about everything	
11	Q. Paragraph 13 says that you also	11	that was going on just to get some background	
12	spoke with "the few employees of HCMFA."	12	0.1	
13	Do you see that in the middle of the	13	Q. Okay. Do you know if Mr. Norris	
14	paragraph?	14	, ·	
15	A. Yes.	15	A. I don't I don't know for certain.	
16	Q. Can you identify the other CMFA	16	I believe he did.	
17	employees that you spoke with as part of your	17	I can't recall what his position	
18	initial investigation?	18	would have been.	
19	A. I would have spoken with Dustin	19	Q. Does he have a position with HCMFA	
20	Norris and	20	today, to the best of your knowledge?	
21	Q. Do you recall speaking I	21	A. I believe he does.	
22	apologize for interrupting.	22	Q. And what do you understand his	
23	Go ahead.	23	position to be?	
24	A. And so he wasn't an HCMFA employee,	24	A. I would say vice president.	
25	but Jason Post.	25	Q. Do you know when he became vice	
1	Page 36 D. Sauter	1	D. Sauter	Page 37
_	president of HCMFA?	1 2		
2	A. I do not.		A. He was chief compliance officer for	
		3	Nexpoint Advisors.	
4	Q. Do you know if he was vice president	4	He may have been the chief	
5	of HCMFA in October 2020?	5	compliance officer for HCMFA as well.	
6	A. I do not.	6	Q. Okay.	
/	Q. Do you know if Mr. Norris holds any	7	A. And if I had to guess, he would have	
8	positions with DAF I'm sorry.	_ n	had those same positions had in 2010	
9	Do you know if Mr. Namia balda and	8	had those same positions back in 2019	
40	Do you know if Mr. Norris holds any	9	Q. Okay.	
10	positions with GAF?	9 10	Q. Okay.A. – because Thomas Surgent was the	
11	positions with GAF? A. I don't know.	9 10 11	Q. Okay.A. – because Thomas Surgent was the chief compliance officer for HCMLP and Jason	
11 12	positions with GAF? A. I don't know. Q. How about Mr. Post? Do you know if	9 10 11 12	 Q. Okay. A. – because Thomas Surgent was the chief compliance officer for HCMLP and Jason worked under him. 	
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1	Page : D. Sauter	8 1	D. Sauter	Page 39
2	A. I think it's something that I raised	2	prior to my conversation with them.	
3	to them because I didn't know where the notes	3	Q. Now, Paragraph 13 says that	
4	had come from.	4	Mr. Dondero could not recall the genesis of the	
5	Q. Right.	5	notes.	
6	And they told you that they were	6	Do you see that?	
7	aware of the notes but they didn't know the	7	A. Yes.	
8	genesis of them?	8	Q. Did Mr. Dondero indicate to you that	
9	A. I don't recall whether they were	9	he was aware of the existence of the notes even	
10	aware of the notes before I asked about them.	10	though he couldn't recall the genesis of the	
11	Q. Did you ask them if they were aware	11		
12	of the notes prior to the time you showed it to	12		
13	them?	13		
14	A. I would have asked them what the	14		
15	notes were about.	15		
16	Q. I don't want to know what you would	16		
17	have done.	17		
18	I know this is hard, Mr. Sauter.	18	first learned of the existence of the notes?	
19	I'm really just asking you to search your	19		
20	memory.	20		
21	Do you recall asking them whether	21	caused you to believe that he was unaware of	
22	they were aware of the existence of the notes	22		
23	prior to your conversation with them?	23	·	
24	A. I don't recall if I asked whether	24		
25	they were aware of the existence of the notes	25	I guess let me clarify.	
	Dane			
	Page -	0		Page 41
1	D. Sauter	0 1	D. Sauter	Page 41
1 2			D. Sauter were.	Page 41
	D. Sauter	1		Page 41
2	D. Sauter He didn't make any comments that made me think one way or the other. Q. And you didn't ask.	1 2	were.	Page 41
2	D. Sauter He didn't make any comments that made me think one way or the other. Q. And you didn't ask. Is that fair?	1 2 3	were. Q. Did you make any effort to try to	Page 41
2 3 4	D. Sauter He didn't make any comments that made me think one way or the other. Q. And you didn't ask. Is that fair? A. Correct, I did not ask.	1 2 3 4	were. Q. Did you make any effort to try to determine whether HCMFA had accounted for the notes in its books and records? A. I did not.	Page 41
2 3 4 5	D. Sauter He didn't make any comments that made me think one way or the other. Q. And you didn't ask. Is that fair? A. Correct, I did not ask. Q. So you had no information as to	1 2 3 4 5	were. Q. Did you make any effort to try to determine whether HCMFA had accounted for the notes in its books and records? A. I did not. Q. Do you know today whether HCMFA ever	Page 41
2 3 4 5	D. Sauter He didn't make any comments that made me think one way or the other. Q. And you didn't ask. Is that fair? A. Correct, I did not ask. Q. So you had no information as to whether or not Mr. Dondero actually knew of the	1 2 3 4 5 6 7 8	were. Q. Did you make any effort to try to determine whether HCMFA had accounted for the notes in its books and records? A. I did not. Q. Do you know today whether HCMFA ever accounted for the notes in its books and	Page 41
2 3 4 5 6 7 8 9	D. Sauter He didn't make any comments that made me think one way or the other. Q. And you didn't ask. Is that fair? A. Correct, I did not ask. Q. So you had no information as to whether or not Mr. Dondero actually knew of the existence of the notes prior to the	1 2 3 4 5 6 7 8	were. Q. Did you make any effort to try to determine whether HCMFA had accounted for the notes in its books and records? A. I did not. Q. Do you know today whether HCMFA ever accounted for the notes in its books and records?	Page 41
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1 D. Sauter	Page 42	1 D. Sauter	Page 43
2 Q. Okay. Do you know if prior to		2 A. Correct.	
3 the time it filed its original answer, whether		3 Q. And HCMFA had no access to the	
4 HCMFA ever asked HCMLP to provide any documents		4 debtor's employees who had provided services to	
5 in connection with the adversary proceeding?		5 HCMFA under shared services agreements.	
6 A. Say that again.		6 Correct?	
7 Q. Sure.		7 A. I think our view was it was	
8 So HCMFA filed its answer on		8 potentially improper to reach out to those	
9 March 1st, according to Paragraph 12.		9 employees on a matter that was adverse to	
10 Do I have that right?		O HCMLP, and so we refrained from doing so.	
11 A. I believe that's right.		11 Q. Okay. And so under those	
12 Q. Okay. Do you know if HCMFA ever		2 circumstances, HCMFA nevertheless filed an	
13 asked Highland for any documents before it		3 answer that asserted no affirmative defenses.	
14 filed its answer?		4 Correct?	
15 A. I don't recall.		5 A. Yes.	
17 answer, Mr. Dondero couldn't recall the genesis 18 of the notes. Correct?		17 mid-April 2001. Correct? 18 A. Yes.	
		9 Q. If we can scroll down to	
19 A. That's right. 20 Q. And neither Mr. Post nor Mr. Norris			
		20 Paragraph 19.	
21 could recall the genesis of the notes.		(Discussion was held off the	
22 Correct?		22 record.)	
23 A. Correct.		Q. So in April 2001, the situation	
24 Q. And HCMFA had limited access to		24 changed because Mr. Waterhouse and other former	
25 books and records. Correct?	1	employees of Highland had migrated over to	
1 D Squitor	Page 44	1 D Squitor	Page 45
1 D. Sauter 2 Skyview so that you had access to them. Is		1 D. Sauter	Page 45
2 Skyview so that you had access to them. Is		2 requests, and those were either granted or	Page 45
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1	D. Sauter	Page 46	1	D. Sauter	Page 47
2	A. I don't know whether we had access			please.	
3	to those memos, but I didn't I wasn't able		3	Actually, look at Paragraph 21	
4	to speak to Frank Waterhouse, and so I didn't		4	first.	
5	know to look for them.		5	According to Paragraph 21, as part	
6	Q. And neither Mr. Dondero nor		6	of the second phase of your investigation, you	
7	Mr. Norris nor Mr. Post thought to inform you		7	spoke with Mr. Waterhouse and Mr. Mabry.	
8	about the NAV star error [sic] because they had		8	Correct?	
9	no idea what the notes related to. Correct?		9	A. Yes.	
10			10	Q. Did you speak with anybody else as	
11	•		11	part of the second phase of your investigation?	
12			12	A. Yes, I would have spoken with Jason	
	•			Post and Dustin Norris.	
13 11	, ,		13		
14 15	,		14	Q. And is it fair to say based on the	
15 16	. , ,		15	second phase of your withdrawn.	
16 17			16	Is it fair to say that your	
17 10			17	conclusions that resulted from the second phase	
18 10	•		18	of your investigation are set forth in	
19	,		19	Paragraph 22?	
20			20	A. (Reviewing document.)	
21	sent to the board.		21	I wouldn't say all of my	
22	·		22	conclusions. But yes, that's some of them.	
23	•		23	Q. Okay. Is it fair to say that, based	
24 			24	on the second phase of your investigation, you	
25	Q. Can we scroll down to Paragraph 22,		25	concluded, among other things, "that the notes	
1	D. Sauter	Page 48	1	D. Sauter	Page 49
2	were signed by mistake by Waterhouse without		2	Q. Do you recall which of the three	
3	authority from HCMFA"?		3	conversations was the longest, which was the	
4	A. Yes.		4	shortest?	
5	Q. Okay. Let's talk about your		5	I just want to get a sense of how	
6	discussions with Mr. Waterhouse as part of your		6	much time you spent with Mr. Waterhouse.	
7	investigation.		7	A. I don't, because again, there was	
-	-				
8	How many times did you speak with		8	lots going on.	
0			0	The first one was in the conference	
9 10			9	The first one was in the conference	
10	A. Probably three.		10	room on the 11th floor at NexBank. The second	
10 11	A. Probably three.Q. And was anybody else present for any		10 11	room on the 11th floor at NexBank. The second one was in his office. And I think the third	
10 11 12	A. Probably three.Q. And was anybody else present for any of the three conversations?		10 11 12	room on the 11th floor at NexBank. The second one was in his office. And I think the third was on a phone call.	
10 11 12 13	A. Probably three.Q. And was anybody else present for any of the three conversations?A. I don't recall. I don't think so.		10 11 12 13	room on the 11th floor at NexBank. The second one was in his office. And I think the third was on a phone call. Q. Did any of them last more than ten	
10 11 12 13	 A. Probably three. Q. And was anybody else present for any of the three conversations? A. I don't recall. I don't think so. Q. Did you take any notes of your 		10 11 12 13 14	room on the 11th floor at NexBank. The second one was in his office. And I think the third was on a phone call. Q. Did any of them last more than ten minutes?	
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D. Sauter Q. Did he tell the circumstances	1	D. Sauter	
	2	chief financial officer. Correct?	
urrounding the execution of the notes?	3	A. I don't think I said that, but that	
A. Yes.		would have been my assumption.	
Q. What did he tell you?	5	Q. Okay. I think if we can give me	
A. He said those notes were executed in		just one moment. I think I	
onnection with the TerreStar NAV error.	7	Can we go to Paragraph 29, please.	
Q. During your discussions with	8	You'll see, according to your	
Ir. Waterhouse, did he ever deny signing the		declaration, it says: "Returning to the notes,	
notes?	10	Waterhouse was the chief financial officer of	
A. No.	11	both the debtor and the HCMFA during the above	
Q. He never told you that he was	12	events and at the time he signed the notes."	
unaware of the existence of the notes, did he?	13	Have I read that correctly?	
A. No.	14	A. You did.	
	15	Q. Does that refresh your recollection	
Q. In fact, before signing your declaration, you believed Mr. Waterhouse in		that at the time you signed this declaration	
•		, ,	
act had signed the notes. Correct? A. Yes.	17	you believed that Mr. Waterhouse was HCMFA's CFO at the time he signed the notes?	
	19	A. It does.	
Q. And that's why in Paragraph 22 you			
specifically wrote that the notes were signed	20	Q. Okay. During your investigation did	
by mistake by Waterhouse. Right?	21	Mr. Waterhouse ever tell you that he signed the	
A. Yes.	22	notes by mistake?	
Q. And you understood at the time you	23	A. No.	
signed your declaration that Mr. Waterhouse had	24	Q. Did you ever ask Mr. Waterhouse	
signed the notes at a time when he was HCMFA's	25	during your investigation whether he signed the	
Page 52 D. Sauter	1	D. Sauter	Page 53
otes by mistake?	2	A. I don't think there's anything else	
A. I guess I'd like to clarify that		in my declaration from	
esponse, if I may.	4	Q. Okay. There's nothing	
Q. Go right ahead.	5	(Simultaneous crosstalk.)	
A. I asked Mr. Waterhouse why he would	6	Q. I apologize.	
ave signed it the notes in his personal	7	A from May that would suggest that	
apacity.		Mr. Waterhouse didn't sign the notes.	
And his response was, I don't know,	9	Q. There's nothing in here, in your	
didn't prepare them.	10	declaration, that states that Mr. Waterhouse	
So I don't know if that gives you		admitted that he made a mistake in signing the	
9 ,	11	notes. Correct?	
he answer you're looking for, but there was	12		
some confusion about the execution of those	13		
10tes.	14	Q. There's nothing in your declaration	
Q. Okay. Did he say anything else	15	that suggests that Mr. Waterhouse in fact did	
hat on the topic of whether signing the	16	not sign or did not authorize the signing of	
notes was a mistake?	17	his signature to these notes. Correct?	
A. No.	18	A. Correct, because he told me he did.	
Q. Okay. Your declaration doesn't	19	Q. Okay. And Mr he told you that	
		-	
declaration that suggests that Mr. Waterhouse	24	was on them, it would have been his.	
nadn't signed the notes?	25	Q. Okay. Mr. Waterhouse never filed	
, , ,	20 21 22 23	he had signed the notes. Correct? A. Yes. He said that he didn't use his electronic signature then, and if his signature	

1	D. Sauter	Page 54	1	D. Sauter	Page 55
1	his own declaration in support of HCMFA's		2	A. No.	
3	motion for leave to amend their answer.		3	Q. Okay. Your declaration certainly	
4	Correct?		4	doesn't say that Mr. Waterhouse admitted	
5	A. Correct.		5	signing the notes without authority. Correct?	
6	Q. During your investigation did you		6	A. Correct.	
7	ask Mr. Waterhouse if he had authority to sign		7	Q. Mr. Waterhouse never filed a	
8	the notes?		8	declaration in this case stating that he had	
9	A. Probably not in those exact words.		9	filed the notes without authority. Correct?	
10	Q. Okay. Did you ask him in form or		10	A. Correct.	
11	substance whether he was authorized to sign the		11	Q. Are you aware that Mr. Waterhouse	
12	notes?		12	was deposed in this case?	
13	A. Yes.		13	A. I'm yes, I'm aware.	
14	Q. And what did he say?		14	Q. Have you reviewed his deposition	
15	A. I think he well, his response was		15	transcript?	
16	if he signed them, he was authorized to sign		16	A. I have not.	
17	them.		17	Q. Has his testimony been described for	
18	Q. Okay. And Mr. Waterhouse never told		18	you by anybody?	
19	you that he signed the notes without authority.		19	MR. RUKAVINA: And I'll just caution	
20	Correct?		20	you, Mr. Sauter. You know, I think that's a	
21	A. He told me that - I asked him if		21	yes or no answer, but don't go into the	
22	Mr. Dondero had approved the notes.		22	substance of any discussions with me.	
23	And I don't think he could recall.		23	THE WITNESS: Yes. Okay.	
24	Q. Okay. Did Mr. Waterhouse ever tell		24	Yes.	
25	you that he signed the notes without authority?		25		
		Page 56			Page 57
1	D. Sauter		1	D. Sauter	
2	BY MR. MORRIS:		2	A. I think I implied it.	
3	Q. All right. Are you aware that he		3	Q. Do you have a recollection of	
4	testified that nobody has ever told him that he		4	actually telling him that he made a mistake?	
5	made a mistake in signing the notes?		5	A. That would be my recollection.	
6	MR. RUKAVINA: Objection, form.		6	Obviously he disagrees with it. Q. Do you know if any and on what	
0	THE WITNESS: I'm not. Q. Are you aware of anybody in the			C. DO VOU KDOW II ADV ADO OD WOAI	
8			7	•	
			8	basis did you conclude that he made a mistake?	
9	world ever telling Mr. Waterhouse that he made		8 9	basis did you conclude that he made a mistake? Withdrawn.	
9 10	world ever telling Mr. Waterhouse that he made a mistake in signing the notes?		8 9 10	basis did you conclude that he made a mistake? Withdrawn. You have no personal knowledge of	
9 10 11	world ever telling Mr. Waterhouse that he made a mistake in signing the notes? A. Yes.		8 9 10 11	basis did you conclude that he made a mistake? Withdrawn. You have no personal knowledge of anything that happened in connection with the	
9 10 11 12	world ever telling Mr. Waterhouse that he made a mistake in signing the notes? A. Yes. Q. And who told him that?		8 9 10 11 12	basis did you conclude that he made a mistake? Withdrawn. You have no personal knowledge of anything that happened in connection with the TerreStar valuation issue. Correct?	
9 10 11 12 13	world ever telling Mr. Waterhouse that he made a mistake in signing the notes? A. Yes. Q. And who told him that? A. Me.		8 9 10 11 12 13	basis did you conclude that he made a mistake? Withdrawn. You have no personal knowledge of anything that happened in connection with the TerreStar valuation issue. Correct? A. I was not personally involved in the	
9 10 11 12 13 14	world ever telling Mr. Waterhouse that he made a mistake in signing the notes? A. Yes. Q. And who told him that? A. Me. Q. And when did you tell him that?		8 9 10 11 12 13 14	basis did you conclude that he made a mistake? Withdrawn. You have no personal knowledge of anything that happened in connection with the TerreStar valuation issue. Correct? A. I was not personally involved in the TerreStar valuation issue, correct.	
9 10 11 12 13 14 15	world ever telling Mr. Waterhouse that he made a mistake in signing the notes? A. Yes. Q. And who told him that? A. Me. Q. And when did you tell him that? A. When we had this discussion.		8 9 10 11 12 13 14 15	basis did you conclude that he made a mistake? Withdrawn. You have no personal knowledge of anything that happened in connection with the TerreStar valuation issue. Correct? A. I was not personally involved in the TerreStar valuation issue, correct. Q. You weren't involved in any of the	
9 10 11 12 13 14 15 16	world ever telling Mr. Waterhouse that he made a mistake in signing the notes? A. Yes. Q. And who told him that? A. Me. Q. And when did you tell him that? A. When we had this discussion. Q. Okay. So it's your testimony that		8 9 10 11 12 13 14 15 16	basis did you conclude that he made a mistake? Withdrawn. You have no personal knowledge of anything that happened in connection with the TerreStar valuation issue. Correct? A. I was not personally involved in the TerreStar valuation issue, correct. Q. You weren't involved in any of the decisions that were made in connection with the	
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9 10 11 12 13 14 15 16 17 18 19	world ever telling Mr. Waterhouse that he made a mistake in signing the notes? A. Yes. Q. And who told him that? A. Me. Q. And when did you tell him that? A. When we had this discussion. Q. Okay. So it's your testimony that you actually told Mr. Waterhouse that he made a mistake in signing the notes. Right? A. I asked him who had approved these		8 9 10 11 12 13 14 15 16 17 18 19	basis did you conclude that he made a mistake? Withdrawn. You have no personal knowledge of anything that happened in connection with the TerreStar valuation issue. Correct? A. I was not personally involved in the TerreStar valuation issue, correct. Q. You weren't involved in any of the decisions that were made in connection with the TerreStar valuation. Correct? A. Correct. Q. You weren't made you weren't	
9 10 11 12 13 14 15 16 17 18 19 20	world ever telling Mr. Waterhouse that he made a mistake in signing the notes? A. Yes. Q. And who told him that? A. Me. Q. And when did you tell him that? A. When we had this discussion. Q. Okay. So it's your testimony that you actually told Mr. Waterhouse that he made a mistake in signing the notes. Right? A. I asked him who had approved these notes and what was the process.		8 9 10 11 12 13 14 15 16 17 18 19 20	basis did you conclude that he made a mistake? Withdrawn. You have no personal knowledge of anything that happened in connection with the TerreStar valuation issue. Correct? A. I was not personally involved in the TerreStar valuation issue, correct. Q. You weren't involved in any of the decisions that were made in connection with the TerreStar valuation. Correct? A. Correct. Q. You weren't made you weren't involved and had no responsibility for HCMFA's	
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9 10 11 12 13 14 15 16 17 18 19 20 21 22	world ever telling Mr. Waterhouse that he made a mistake in signing the notes? A. Yes. Q. And who told him that? A. Me. Q. And when did you tell him that? A. When we had this discussion. Q. Okay. So it's your testimony that you actually told Mr. Waterhouse that he made a mistake in signing the notes. Right? A. I asked him who had approved these notes and what was the process. And he said he couldn't give me any process. He said the money was transferred,		8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	basis did you conclude that he made a mistake? Withdrawn. You have no personal knowledge of anything that happened in connection with the TerreStar valuation issue. Correct? A. I was not personally involved in the TerreStar valuation issue, correct. Q. You weren't involved in any of the decisions that were made in connection with the TerreStar valuation. Correct? A. Correct. Q. You weren't made you weren't involved and had no responsibility for HCMFA's response to the SEC. Correct? A. Correct.	
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1 D. Sauter	Page 58	1	D. Sauter	Page 59
2 A. Correct.			Mr. Waterhouse, does it?	
3 Q. You had no responsibility or		3	A. It does not.	
4 involvement in how HCMFA reported to GAF.		4	Q. In fact, your declaration is just	
5 Correct?		5	withdrawn.	
6 A. Correct.		6	If we can go to Paragraph 30.	
7 Q. But nevertheless, despite having no		7	Take a look at Paragraph 30. We'll	
8 personal knowledge of those issues, you told		8	kind of parse it through.	
9 Mr. Waterhouse or implied to Mr. Waterhouse		9	The first sentence says: "It	
		10	appears clear that Mr. Waterhouse made a	
10 that he made a mistake in executing the notes. 11 Correct?		11	mistake."	
12 A. Correct.		12	Do you see that?	
			•	
13 Q. What did Mr. Waterhouse say in		13 14	A. Yes.	
14 response?			Q. But again, Mr. Waterhouse never	
15 A. Not much. He just disagreed.		15	admitted to making a mistake. Correct?	
16 Q. Did he just say, I disagree, and		16	A. Correct.	
17 that's it or did he actually do you recall		17	Q. And this is your this is a	
18 anything specific that he said?		18	conclusion that you're reaching in May of 2021,	
19 A. I think I've already testified he		19	more than two years after the fact. Correct?	
20 said, we transferred the money, so I executed		20	A. Based upon my review of the	
21 the notes. HCMFA didn't have the money to pay		21	documents and my discussions with Mr. Post and	
22 GAF, and so we transferred it from HCMLP and I		22	Mr. Norris.	
23 executed the notes.		23	Q. Did you ever have any discussions	
Q. Okay. Your declaration doesn't		24	with Mr. Dondero in May of 2021 as you were	
25 attribute any specific statements to		25	preparing this document?	
1 D. Sauter	Page 60	1	D. Sauter	Page 6
2 A. Did I have any discussions with him		2	Q. Okay. Again, that's your own	
3 about this?		3	conclusion. Is that fair?	
4 Q. I apologize. That was a bad		4	A. That's correct.	
5 question.		5	Q. And then you continue on and you	
6 Did you discuss in May of 2021 the				
			write: "Third" withdrawn.	
· · · · · · · · · · · · · · · · · · ·			write: "Third" withdrawn. You write: "Third, it therefore	
7 issues concerning the notes with Mr. Dondero,		6 7	You write: "Third, it therefore	
7 issues concerning the notes with Mr. Dondero, 8 or was that just part of the initial		6 7 8	You write: "Third, it therefore appears that Mr. Waterhouse prepared the notes	
7 issues concerning the notes with Mr. Dondero, 8 or was that just part of the initial 9 investigation?		6 7 8 9	You write: "Third, it therefore appears that Mr. Waterhouse prepared the notes for some internal accounting or other purpose	
7 issues concerning the notes with Mr. Dondero, 8 or was that just part of the initial 9 investigation? 10 A. I don't recall.		6 7 8 9 10	You write: "Third, it therefore appears that Mr. Waterhouse prepared the notes for some internal accounting or other purpose but without there being actual consideration	
7 issues concerning the notes with Mr. Dondero, 8 or was that just part of the initial 9 investigation? 10 A. I don't recall. 11 Q. And then a couple of lines down, you		6 7 8 9 10 11	You write: "Third, it therefore appears that Mr. Waterhouse prepared the notes for some internal accounting or other purpose but without there being actual consideration for the notes and without any intention on the	
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7 issues concerning the notes with Mr. Dondero, 8 or was that just part of the initial 9 investigation? 10 A. I don't recall. 11 Q. And then a couple of lines down, you 12 say you wrote: "It appears that 13 Mr. Waterhouse assumed incorrectly that the 14 funds being paid by the debtor were a loan to 15 HCMFA." 16 Do you see that? 17 A. Yes. 18 Q. Did you ask Mr. Waterhouse if he 19 actually made the assumption that you're 20 attributing to him? 21 A. Yes. 22 Q. And did he ever admit that the		6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	You write: "Third, it therefore appears that Mr. Waterhouse prepared the notes for some internal accounting or other purpose but without there being actual consideration for the notes and without any intention on the part of the debtor and HCMFA that there be notes or that there be a loan transaction." Have I read that correctly? A. Yes. Q. So did Mr. Waterhouse tell you that he prepared the notes for some internal accounting or other purpose? A. Yes. Q. And did he tell you what the purpose of the notes was? A. Yes.	

4	Page 62		D. Courtor	Page 63
1	D. Sauter "There was no" withdrawn.	1	D. Sauter	
2		2	Q. What's the basis for your sworn	
3	You state in your declaration that	3	statement concerning the debtor's intentions?	
4	there was no "intention on the part of the	4	MR. RUKAVINA: Again, I'll object.	
5	debtor and HCMFA that there be notes or that	5	Just so that we're clear, Mr. Sauter	
6	there be a loan transaction."	6	says "it appears that." He does not say it is	
7	Do you see that?	7	a fact. He says "it appears that." There is a	
8	A. Yes.	8	distinction there.	
9	Q. What's the basis for	9	MR. MORRIS: Okay. You've got your	
10	•	10	•	
11	I apologize. I apologize, John.	11	BY MR. MORRIS:	
12	1 3 /	12	Q. What's the basis for your statement	
13	• •	13		
14	That's not what this says.	14		
15		15		
16	MR. MORRIS: Well, then let me	16	A. If you're talking about a	
17	restate it if I read it incorrectly.	17	\$7.4 million obligation, I would assume that	
18	BY MR. MORRIS:	18	there would be a process internally on who was	
19	Q. Mr. Sauter, does the last sentence	19	responsible for the payment of the fees for	
20		20	the or the expenses for the NAV error.	
21	that the notes were prepared "without any	21	Based upon my discussions with Frank	
22	intention on the part of the debtor and HCMFA	22	Waterhouse, there was no process or the legal	
23	that there be notes or that there be a loan	23	department was not involved in making a	
24	transaction"?	24	determination as to whether there should be	
25	A. Yes.	25	notes. It was merely a ministerial act that	
	Page 64			Page 65
1	D. Sauter	1	D. Sauter	
2	accounting performed when they transferred the	2	A. I don't know for certain.	
3	funds to pay GAF.	3	But I know there was a policy in	
4	Q. Is it your testimony as the general	4	place as of 2018.	
5	counsel of Nexpoint that the law department or	5	Q. Okay. Other than the policy, have	
6	the legal department is involved in every note	6	you ever seen any memo written withdrawn.	
7	that's executed by one of the Highland	7	Have you ever seen any document in	
8	affiliates?	8	the world that states that HCMLP is responsible	
9	MR. RUKAVINA: Object to the form.			
10		9	for the TerreStar NAV error?	
	·	9	for the TerreStar NAV error? A. I would say the memos that	
11	•			
	THE WITNESS: I can't answer that. Q. Okay. So other than the fact that	10	A. I would say the memos that acknowledged that there was a mistake.	
11	THE WITNESS: I can't answer that. Q. Okay. So other than the fact that it didn't go past the legal department, do you	10 11	A. I would say the memos that acknowledged that there was a mistake.	
11 12	THE WITNESS: I can't answer that. Q. Okay. So other than the fact that it didn't go past the legal department, do you have any other basis for your statement that it	10 11 12	A. I would say the memos that acknowledged that there was a mistake. Q. And is it your recollection that the memos specifically say that HCMLP was	
11 12 13	THE WITNESS: I can't answer that. Q. Okay. So other than the fact that it didn't go past the legal department, do you have any other basis for your statement that it appears that the debtor had no intention that	10 11 12 13	A. I would say the memos that acknowledged that there was a mistake. Q. And is it your recollection that the memos specifically say that HCMLP was	
11 12 13 14	THE WITNESS: I can't answer that. Q. Okay. So other than the fact that it didn't go past the legal department, do you have any other basis for your statement that it appears that the debtor had no intention that there would be notes?	10 11 12 13 14	A. I would say the memos that acknowledged that there was a mistake. Q. And is it your recollection that the memos specifically say that HCMLP was responsible for the mistake?	
11 12 13 14 15	THE WITNESS: I can't answer that. Q. Okay. So other than the fact that it didn't go past the legal department, do you have any other basis for your statement that it appears that the debtor had no intention that there would be notes? A. Yes, there's an internal NAV error	10 11 12 13 14 15	A. I would say the memos that acknowledged that there was a mistake. Q. And is it your recollection that the memos specifically say that HCMLP was responsible for the mistake? A. No, because the memos were vis-‡vis	
11 12 13 14 15 16	THE WITNESS: I can't answer that. Q. Okay. So other than the fact that it didn't go past the legal department, do you have any other basis for your statement that it appears that the debtor had no intention that there would be notes? A. Yes, there's an internal NAV error correction policy that obligates the	10 11 12 13 14 15 16	A. I would say the memos that acknowledged that there was a mistake. Q. And is it your recollection that the memos specifically say that HCMLP was responsible for the mistake? A. No, because the memos were vis-≢vis HCMFA and GAF.	
11 12 13 14 15 16 17	THE WITNESS: I can't answer that. Q. Okay. So other than the fact that it didn't go past the legal department, do you have any other basis for your statement that it appears that the debtor had no intention that there would be notes? A. Yes, there's an internal NAV error correction policy that obligates the responsible party to pay for it.	10 11 12 13 14 15 16	A. I would say the memos that acknowledged that there was a mistake. Q. And is it your recollection that the memos specifically say that HCMLP was responsible for the mistake? A. No, because the memos were vis-‡vis HCMFA and GAF. Q. Okay. So let me ask you the	
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11 12 13 14 15 16 17 18 19 20	THE WITNESS: I can't answer that. Q. Okay. So other than the fact that it didn't go past the legal department, do you have any other basis for your statement that it appears that the debtor had no intention that there would be notes? A. Yes, there's an internal NAV error correction policy that obligates the responsible party to pay for it. In this case it was HCMLP that made the NAV error. Q. There's a policy that you're	10 11 12 13 14 15 16 17 18 19 20	A. I would say the memos that acknowledged that there was a mistake. Q. And is it your recollection that the memos specifically say that HCMLP was responsible for the mistake? A. No, because the memos were vis-≢vis HCMFA and GAF. Q. Okay. So let me ask you the question again. During the course of your two	
11 12 13 14 15 16 17 18 19 20 21 22	THE WITNESS: I can't answer that. Q. Okay. So other than the fact that it didn't go past the legal department, do you have any other basis for your statement that it appears that the debtor had no intention that there would be notes? A. Yes, there's an internal NAV error correction policy that obligates the responsible party to pay for it. In this case it was HCMLP that made the NAV error. Q. There's a policy that you're referring to?	10 11 12 13 14 15 16 17 18 19 20 21	A. I would say the memos that acknowledged that there was a mistake. Q. And is it your recollection that the memos specifically say that HCMLP was responsible for the mistake? A. No, because the memos were vis-‡vis HCMFA and GAF. Q. Okay. So let me ask you the question again. During the course of your two investigations, did you ever see a document that stated that HCMLP was responsible for the TerreStar NAV error?	
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1	D. Sauter	Page 66	1	D. Sauter	Page 67
1	A. That's correct.		1 2	MR. MORRIS: We're not taking a	
3			3	break, bud. I'm not	
	•			,	
4	A. Can we take a quick break?		4	(Simultaneous crosstalk.) MR. RUKAVINA: We'll be back in ten	
5	Q. Yeah, now would be perfectly fine.		5		
6	Give me just one second before we go		6	minutes.	
7	off the record.		7	MR. MORRIS: Hey, Davor, I'm going	
8	So it's 2:15 local time. Can we		8	to ask your client a question. Okay?	
9	limit it to ten minutes, Mr. Sauter?		9	(Simultaneous crosstalk.)	
10	A. Yeah, that would be fine.		10	MR. RUKAVINA: but we're not	
11	Q. Okay. And I would ask that you're		11	I'm sorry.	
12	,		12	You can ask him afterwards who he's	
13	speak with counsel or communicate with anybody		13	talked to and about what, but you don't get to	
14	about the substance of your deposition.		14	tell him that he can't talk to anyone.	
15	Is that fair?		15	So let's go take a piss break and be	
16	MR. RUKAVINA: Don't answer that		16	back in nine minutes.	
7	•		17	MR. MORRIS: Put that on the record.	
8	The law is what it is, and we're not		18	(Recess was taken from 2:17 p.m. to	
19	going to agree to something (audio issue) than		19	2:28 p.m.)	
20	the law requires.		20	BY MR. MORRIS:	
21	MR. MORRIS: Well, then I'm not		21	Q. Are you ready to proceed, Mr.	
22	going to take a break. How about that?		22	Sauter?	
23	Let's keep going.		23	A. Iam.	
24	MR. RUKAVINA: No, we're taking a		24	 Q. During the break did you speak to 	
25	break and I'm going to the restroom.		25	anybody about the substance of your testimony?	
_	D.O. 1	Page 68	_	D.O. 1	Page 6
1	D. Sauter		1	D. Sauter	
2	A. I did not.			right?	
3	Q. Okay. Did you communicate with		3	A. Well, I didn't review them in	
4	anybody about the substance of your testimony?		4	connection with my preparation of the	
5	A. I did not.		5	declaration, but yes, I had reviewed them.	
6	 Q. I want to stick with the focus on 		_		
			6	Q. And in reviewing them, did you learn	
/	the debtor's intent as stated in Paragraph 30.		7	that the debtor had in fact carried the notes	
_	the debtor's intent as stated in Paragraph 30. Before you prepared your		7 8	that the debtor had in fact carried the notes as assets on its balance sheet or on its	
9	the debtor's intent as stated in Paragraph 30. Before you prepared your declaration, did you spend any time reviewing		7 8 9	that the debtor had in fact carried the notes as assets on its balance sheet or on its schedules of assets and liabilities?	
9 10	the debtor's intent as stated in Paragraph 30. Before you prepared your declaration, did you spend any time reviewing any of the debtor's bankruptcy filings?		7 8 9 10	that the debtor had in fact carried the notes as assets on its balance sheet or on its schedules of assets and liabilities? MR. RUKAVINA: I'm going to object	
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1 D. Sauter	Page 70	1	D. Sauter	Page 71
2 A. Generally, I guess, yes.			in this particular adversary proceeding?	
3 But I'm not aware of a particular		3	A. Yes.	
4 document called statement of financial affairs.		4	Q. Are you aware that both HCMFA and	
5 Q. Are you aware that while Mr. Dondero			Highland disclosed the existence of the notes	
6 was in control of Highland during the			to their outside auditors within 30 days of	
7 bankruptcy, the debtor filed documents stating			their execution?	
8 that the notes were assets of the estate?		8	MR. RUKAVINA: Objection, form.	
9 A. I was not.		9	THE WITNESS: Yes.	
10 Q. Okay. Did you ever, as part of your		10	And it's my understanding that's why	
11 investigation, try to see how the debtor		11	the notes were prepared.	
12 treated the notes in its court filings?		12	Q. And what's that understanding based	
13 A. I did not, beyond the filing of the			on?	
14 complaint.		14	MR. RUKAVINA: And now, Mr. Sauter,	
15 Q. So you never had a conversation with		15	let's be very careful here.	
16 anybody withdrawn.		16	Please answer only if it's based on	
			factual information that a nonlawyer told you.	
Did you ever ask Mr. Waterhouse howthe debtor treated the notes in its books and		17 18	THE WITNESS: Yeah. I believe	
		_		
19 records?		19	Mr. Waterhouse told me that he needed a note to	
20 A. No.		20	document the transfer of funds. BY MR. MORRIS:	
21 Q. Did you ever ask Mr. Waterhouse how		21		
22 HCMFA treated the notes in its books and		22	Q. Okay. But I asked you a different	
23 records?		23	question, and that's simply whether or not	
A. No.			you're aware as you sit here today whether	
25 Q. Have you been following developments		25	HCMFA and Highland disclosed the existence of	
1 D. Sauter	Page 72		D. Sauter	Page 73
1 D. Sauter		1	D. Saulei	
2 the notes to the outside auditors.				
2 the notes to the outside auditors.		2	December 31st, 2018.	
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1	Page 74 D. Sauter	1	D. Sauter	Page 75
l	adversary proceeding as you understand the	2	financial statements for as subsequent	
3	timing. Correct?	3	events at the time you executed your	
4	A. Yep.	4	declaration. Correct?	
5	Q. Let's go to Page 17, please.	5	A. Correct.	
6	Do you see there's a section in the	6	Q. Now that you know that, do you think	
7	audited financial statements called Subsequent	7	HCMFA made a mistake in including these notes	
8	Events?	8	in the audited financial statements, or does it	
9	A. Yep.	9	cause you to reconsider your conclusion that	
10	Q. Do you have any understanding as to	10	the issuance of the notes was a mistake?	
11	what a Subsequent Events section is in audited	11	MR. RUKAVINA: I'll object to that	
12	financial statements?	12	question based on form.	
13	A. Yes.	13	THE WITNESS: You're asking me for	
14	Q. What's your understanding of what	14	my legal conclusion?	
15	that section is supposed to include?	15	Q. No, I'm not actually, but it	
16	A. It's intended to pick up events that	16	probably wasn't a great question.	
17	occurred after the date of the financials but	17	So your conclusion was that the	
18	prior to the date the financials are	18	execution of the notes was a mistake. Correct?	
19	executed or issued.	19	A. Yes.	
20	Q. And do you see in the second	20	Q. But HCMFA is reporting the notes as	
21	paragraph there's a description of the two	21	part of its audited financial statements.	
22	notes?	22	Correct?	
23	A. Yes.	23	A. Yes.	
23 24	Q. Okay. You were not aware that the	24	Q. And do you understand that these	
	two notes were included in HCMFA's audited		•	
25	two notes were included in HCIVIFA's addited	25	financial statements have been audited by	
_	Page 76			Page 77
1	D Sauter	1	D Sauter	rage //
1	D. Sauter independent outside firm	1 2	D. Sauter	rage //
2	independent an independent outside firm	2	notes was a mistake?	rage II
2	independent – an independent outside firm called PricewaterhouseCoopers?	3	notes was a mistake? MR. RUKAVINA: I'll again object.	rage II
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1 D. Sauter	Page 78	D. Sauter	Page 79
2 has no personal knowledge.	2		
3 THE WITNESS: Yeah, I can't tell you			
4 whether that's a mistake.			
5 My experience is that generally	Į	·	
6 accounting folks internally said that.			
7 So if the accounting folks made a	7		
8 determination that the notes should be included	8	3 incorrect?	
9 as a subsequent event, then the auditors would	9	A. Idon't know.	
10 include it as a subsequent event.	1	Q. Do you know whether the debtor	
11 BY MR. MORRIS:	1		
12 Q. Okay. Do you know, is there anybody	1	2 financial statements?	
13 at HCMFA who's responsible for overseeing the	1	3 A. Idon't.	
14 preparation of the audited financial	1	4 Q. Let's go back to your declaration,	
15 statements?	1	5 please, Paragraph 28.	
16 A. I think Mr. Waterhouse.	1		
17 Q. When did you first learn that the	1		
18 notes had been included in the financial	1	8 having caused the NAV error, and the debtor	
19 statements?	1	9 ultimately, whether through insurance or its	
20 Are you learning that for the first	2	own funds, compensated HCMFA for the above	
21 time right now or did you know that before	2	1 payments."	
22 today?	2	2 Have I read that correctly?	
23 A. I think I heard that a couple weeks	2		
24 ago.	2	4 Q. Paragraph 28 doesn't cite any source	
25 MR. RUKAVINA: Let's be careful here	2	5 for that statement. Right?	
	Page 80		Page 81
1 D. Sauter	, age at	D. Sauter	. age ex
2 A. Correct.	2	You have no personal knowledge that	
3 Q. Okay. You don't attribute that	3	Mr. Surgent accepted, on behalf of the debtor,	
4 statement to any particular person. Correct?	4	responsibility for the NAV error. Correct?	
5 A. That's correct.	5	A. I have no personal knowledge of	
6 Q. What is the basis for your statement	6	•	
7 that the debtor accepted responsibility to	7	Q. Okay. And did Mr. Waterhouse tell	
8 HCMFA?	8	B you that the debtor accepted responsibility to	
9 A. It would be that the debtor's	(HCMFA for having caused the NAV error?	
10 employees who performed the valuation function	1		
11 acknowledged that they had made a mistake.	1	1 3	
12 Q. And who are those employees?	1	, ,	
13 A. Well, ultimately I don't know	1	,	
14 exactly who it was that came to that	1		
15 determination, but I think it was Frank	1	•	
16 Waterhouse and Thomas Surgent.	1	•	
17 Q. Did you ever interview Mr. Surgent	1		
18 as part of your investigation?	1		
19 A. No, I was prohibited from speaking	1	•	
20 with him.	2	0 reason why you didn't share that with the	
	I		
21 Q. So you're not aware of	2		
Q. So you're not aware ofMr. Waterhouse ever saying that the debtor	2	2 A. No.	
 Q. So you're not aware of Mr. Waterhouse ever saying that the debtor accepted responsibility withdrawn. 	2 2	A. No. Q. Is there anything in writing that	
 Q. So you're not aware of Mr. Waterhouse ever saying that the debtor accepted responsibility withdrawn. You're not aware of Mr. Surgent 	2 2 2	A. No. Q. Is there anything in writing that you've ever seen which states that the debtor	
Q. So you're not aware of Mr. Waterhouse ever saying that the debtor accepted responsibility withdrawn.	2 2	A. No. Q. Is there anything in writing that you've ever seen which states that the debtor	

1 D Courter	Page 82	4	D. Courtes	Page 83
1 D. Sauter 2 caused the NAV error?		1 2	D. Sauter (Eybibit 193, Momo dated 5/39/10)	
			(Exhibit 182, Memo dated 5/28/19,	
3 A. Other than what I've identified, no.4 Q. And what you've identified is that		3 4	previously marked for identification.) BY MR. MORRIS:	
·		5	Q. Is this one of the memos that and	
5 policy. Is that right?				
6 A. There's a policy and the			again, Mr. Sauter, if you need to see more of	
7 acknowledgment that the NAV error was made by			it, just let me know.	
8 the HCMLP employees who were on the valuation		8	But is this one of the memos that	
9 committee.			you saw as part of your investigation?	
10 Q. Okay. You're aware that shortly		10	A. I believe so.	
11 after HCMFA paid the \$7.4 million to the fund,		11	Q. Okay. And do you understand that	
12 HCMFA sent the fund a written report. Is that		12	this is a memo from HCMFA to the board of the	
13 right?		13	Highland Global Allocation Fund?	
14 A. Yes.		14	A. Yes.	
15 Q. Let's take a look at that, if we can		15	Q. And this is where HCMFA describes	
16 put that on the screen.		16	for the board the resolution of the NAV error.	
17 MS. CANTY: Sorry, John, you went		17	Correct?	
18 out for a second.		18	A. Correct.	
19 Can you say that again.		19	Q. Okay. And did you discuss this memo	
20 MR. MORRIS: Yeah.		20	with anybody as part of your investigation?	
21 If you could, I think I think I		21	A. I mean, other than reviewing it, no.	
22 had it listed as Exhibit 37, but it's one of		22	Q. So and how did you obtain a copy	
23 the new ones. It's the memo, I think, from		23	of it?	
24 HCMFA to the funds.		24	A. Mr. Post.	
25 MS. CANTY: Got it.		25	Q. So Mr. Post gave it to you.	
	Page 84			Page 85
			D. Courtor	
1 D. Sauter		1	D. Sauter	
2 But you didn't speak with him about		2	Yes. Okay.	
But you didn't speak with him aboutit in substance. Correct?		2	Yes. Okay. Q. So then the second page is this NAV	
2 But you didn't speak with him about		2	Yes. Okay. Q. So then the second page is this NAV error breakdown.	
But you didn't speak with him aboutit in substance. Correct?		2	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that?	
 But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the 		2 3 4	Yes. Okay. Q. So then the second page is this NAV error breakdown.	
 But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the transaction and the mistake. I did the same thing with Dustin Norris. 		2 3 4 5 6 7	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but	
2 But you didn't speak with him about 3 it in substance. Correct? 4 A. I mean, I spoke to him about the 5 transaction and the mistake. 6 I did the same thing with Dustin		2 3 4 5 6 7	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes.	
But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the transaction and the mistake. I did the same thing with Dustin Norris. Q. Okay. But you didn't speak with anybody about the substance of this memo.		2 3 4 5 6 7	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but	
But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the transaction and the mistake. I did the same thing with Dustin Norris. Q. Okay. But you didn't speak with		2 3 4 5 6 7 8	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page.	
2 But you didn't speak with him about 3 it in substance. Correct? 4 A. I mean, I spoke to him about the 5 transaction and the mistake. 6 I did the same thing with Dustin 7 Norris. 8 Q. Okay. But you didn't speak with 9 anybody about the substance of this memo.		2 3 4 5 6 7 8 9	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page. Have you taken a look at the second	
But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the transaction and the mistake. I did the same thing with Dustin Norris. Q. Okay. But you didn't speak with anybody about the substance of this memo. Correct?		2 3 4 5 6 7 8 9	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page. Have you taken a look at the second paragraph there that begins: "The advisor and	
2 But you didn't speak with him about 3 it in substance. Correct? 4 A. I mean, I spoke to him about the 5 transaction and the mistake. 6 I did the same thing with Dustin 7 Norris. 8 Q. Okay. But you didn't speak with 9 anybody about the substance of this memo. 10 Correct? 11 A. Correct.		2 3 4 5 6 7 8 9 10 11	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page. Have you taken a look at the second paragraph there that begins: "The advisor and Houlihan Lokey, an independent third party	
But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the transaction and the mistake. I did the same thing with Dustin Norris. Q. Okay. But you didn't speak with anybody about the substance of this memo. Correct? A. Correct. Q. Okay. And but you did see this		2 3 4 5 6 7 8 9 10 11 12	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page. Have you taken a look at the second paragraph there that begins: "The advisor and Houlihan Lokey, an independent third party expert valuation consultant approved by the	
But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the transaction and the mistake. I did the same thing with Dustin Norris. Q. Okay. But you didn't speak with anybody about the substance of this memo. Correct? A. Correct. Q. Okay. And but you did see this memo before you signed your declaration.		2 3 4 5 6 7 8 9 10 11 12 13	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page. Have you taken a look at the second paragraph there that begins: "The advisor and Houlihan Lokey, an independent third party expert valuation consultant approved by the board," have you read that paragraph?	
But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the transaction and the mistake. I did the same thing with Dustin Norris. Q. Okay. But you didn't speak with anybody about the substance of this memo. Correct? A. Correct. Q. Okay. And but you did see this memo before you signed your declaration.		2 3 4 5 6 7 8 9 10 11 12 13 14	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page. Have you taken a look at the second paragraph there that begins: "The advisor and Houlihan Lokey, an independent third party expert valuation consultant approved by the board," have you read that paragraph? A. Yes.	
2 But you didn't speak with him about 3 it in substance. Correct? 4 A. I mean, I spoke to him about the 5 transaction and the mistake. 6 I did the same thing with Dustin 7 Norris. 8 Q. Okay. But you didn't speak with 9 anybody about the substance of this memo. 10 Correct? 11 A. Correct. 12 Q. Okay. And but you did see this 13 memo before you signed your declaration. 14 Correct? 15 A. Yes.		2 3 4 5 6 7 8 9 10 11 12 13 14 15	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page. Have you taken a look at the second paragraph there that begins: "The advisor and Houlihan Lokey, an independent third party expert valuation consultant approved by the board," have you read that paragraph? A. Yes. Q. Okay. To the best of your	
But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the transaction and the mistake. I did the same thing with Dustin Norris. Q. Okay. But you didn't speak with anybody about the substance of this memo. Correct? A. Correct. Q. Okay. And but you did see this memo before you signed your declaration. Correct? A. Yes. Q. Okay. And do you have an		2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page. Have you taken a look at the second paragraph there that begins: "The advisor and Houlihan Lokey, an independent third party expert valuation consultant approved by the board," have you read that paragraph? A. Yes. Q. Okay. To the best of your knowledge, did HCMFA accurately define "NAV"	
But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the transaction and the mistake. I did the same thing with Dustin Norris. Q. Okay. But you didn't speak with anybody about the substance of this memo. Correct? A. Correct. Q. Okay. And but you did see this memo before you signed your declaration. Correct? A. Yes. Q. Okay. And do you have an understanding of what this memo is?		2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page. Have you taken a look at the second paragraph there that begins: "The advisor and Houlihan Lokey, an independent third party expert valuation consultant approved by the board," have you read that paragraph? A. Yes. Q. Okay. To the best of your knowledge, did HCMFA accurately define "NAV error" for the board in that paragraph?	
But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the transaction and the mistake. I did the same thing with Dustin Norris. Q. Okay. But you didn't speak with anybody about the substance of this memo. Correct? A. Correct. Q. Okay. And but you did see this memo before you signed your declaration. Correct? A. Yes. Q. Okay. And do you have an understanding of what this memo is? A. Yeah.		2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page. Have you taken a look at the second paragraph there that begins: "The advisor and Houlihan Lokey, an independent third party expert valuation consultant approved by the board," have you read that paragraph? A. Yes. Q. Okay. To the best of your knowledge, did HCMFA accurately define "NAV error" for the board in that paragraph? MR. RUKAVINA: Objection	
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But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the transaction and the mistake. I did the same thing with Dustin Norris. Q. Okay. But you didn't speak with anybody about the substance of this memo. Correct? A. Correct. Q. Okay. And but you did see this memo before you signed your declaration. Correct? A. Yes. Q. Okay. And do you have an understanding of what this memo is? A. Yeah. I'd like to take a I'd like to see the memo in full. Q. Sure. Take your time. So just tell Ms. Canty when you want		2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page. Have you taken a look at the second paragraph there that begins: "The advisor and Houlihan Lokey, an independent third party expert valuation consultant approved by the board," have you read that paragraph? A. Yes. Q. Okay. To the best of your knowledge, did HCMFA accurately define "NAV error" for the board in that paragraph? MR. RUKAVINA: Objection THE WITNESS: As far as I know, yes. MR. RUKAVINA: This witness is not an expert and has no personal knowledge. Q. Do you have any reason to believe	
But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the transaction and the mistake. I did the same thing with Dustin Norris. Q. Okay. But you didn't speak with anybody about the substance of this memo. Correct? A. Correct. Q. Okay. And but you did see this memo before you signed your declaration. Correct? A. Yes. Q. Okay. And do you have an understanding of what this memo is? A. Yeah. I'd like to take a I'd like to see the memo in full. Q. Sure. Take your time. So just tell Ms. Canty when you want to see more and then she'll scroll.		2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page. Have you taken a look at the second paragraph there that begins: "The advisor and Houlihan Lokey, an independent third party expert valuation consultant approved by the board," have you read that paragraph? A. Yes. Q. Okay. To the best of your knowledge, did HCMFA accurately define "NAV error" for the board in that paragraph? MR. RUKAVINA: Objection THE WITNESS: As far as I know, yes. MR. RUKAVINA: This witness is not an expert and has no personal knowledge. Q. Do you have any reason to believe that HCMFA did not accurately describe for the	
But you didn't speak with him about it in substance. Correct? A. I mean, I spoke to him about the transaction and the mistake. I did the same thing with Dustin Norris. Q. Okay. But you didn't speak with anybody about the substance of this memo. Correct? A. Correct. Q. Okay. And but you did see this memo before you signed your declaration. Correct? A. Yes. Q. Okay. And do you have an understanding of what this memo is? A. Yeah. I'd like to take a I'd like to see the memo in full. Q. Sure. Take your time. So just tell Ms. Canty when you want		2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Yes. Okay. Q. So then the second page is this NAV error breakdown. Do you see that? A. Yes. Q. All right. We'll come to that, but let's go back to the first page. Have you taken a look at the second paragraph there that begins: "The advisor and Houlihan Lokey, an independent third party expert valuation consultant approved by the board," have you read that paragraph? A. Yes. Q. Okay. To the best of your knowledge, did HCMFA accurately define "NAV error" for the board in that paragraph? MR. RUKAVINA: Objection THE WITNESS: As far as I know, yes. MR. RUKAVINA: This witness is not an expert and has no personal knowledge. Q. Do you have any reason to believe	

1	Page 86 D. Sauter	1	D. Sauter	Page 87
2	Q. Do you have any reason to believe	2	Q. Okay. Who's Houlihan Lokey? Do you	
3	take a look at the last sentence.	3	know who Houlihan Lokey is?	
4	"The orderly determination and	4	A. It's a third party valuation firm.	
5	adoption of the weighted fair valuation	5	Q. Do they have a good reputation?	
6	methodology resulted in NAV errors in the	6	A. Yes.	
7	fund."	7	Q. And did they do the valuation of	
8	Do you see that?	8	TerreStar?	
9	A. Yes.	9	A. That's my understanding.	
10	Q. And that's what's being defined as	10	Q. Okay. And were they retained by the	
11	the NAV error. Correct?	11	advisor or by HCMLP?	
12	A. Yes.	12	A. I don't know.	
13	Q. Do you have any reason to believe	13	Q. Did you ever ask anybody who hired	
14	that that sentence is false or misleading in	14		
15	any way?	15	A. I did not.	
16	A. I do not.	16	Q. Do you know whether HCMFA utilizes	
17	Q. Nothing you uncovered during your	17		
18	investigation caused you to believe that that	18	ordinary course of its business?	
19	sentence was false or misleading in any way.	19	A. I don't know.	
20	Correct?	20	I know that Houlihan Lokey has been	
21	A. No.	21	utilized by either HCMLP, HCMFA or Nexpoint	
22	Q. Okay. And the advisor was the	22	Advisors in the past.	
23	entity that made the orderly determination.	23	Q. And to the best of your knowledge,	
24	Correct?	24	has – have those entities continued to use	
25	A. That's what this memo says.	25	Houlihan Lokey even after May 2019?	
1	D. Sauter	1	D. Sauter	Page 89
2	A. I I don't know.	2	to two different payments?	
3	Q. Do you know whether anybody ever	3	A. Yes.	
4	suggested that Houlihan Lokey was responsible	4	Q. A payment of approximately	
5	for the valuation error?			
6	A 1 1 1/2	5	\$5.2 million was made on February 15th, 2019,	
	A. I don't.	5	\$5.2 million was made on February 15th, 2019, and a second payment of approximately	
7		5 6 7	and a second payment of approximately	
7 8	A. I don't. Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error?		and a second payment of approximately	
7 8 9	Q. Did you ever ask anybody if Houlihan	7	and a second payment of approximately \$2.4 million was made on May 2nd.	
	Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error?	7 8	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right?	
9 10	Q. Did you ever ask anybody if HoulihanLokey was responsible for the valuation error?A. No.Q. Do you know if to the best of	7 8 9	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes.	
9 10 11	 Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error? A. No. Q. Do you know if to the best of your knowledge, this memo was given to the 	7 8 9 10	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes. Q. Do you know what the source of funding was for the first payment?	
9 10 11 12	Q. Did you ever ask anybody if HoulihanLokey was responsible for the valuation error?A. No.Q. Do you know if to the best of	7 8 9 10 11	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes. Q. Do you know what the source of funding was for the first payment?	
9 10 11 12 13	 Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error? A. No. Q. Do you know if to the best of your knowledge, this memo was given to the board by HCMFA. Correct? A. Yes. 	7 8 9 10 11 12	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes. Q. Do you know what the source of funding was for the first payment? A. I do not.	
9 10 11	 Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error? A. No. Q. Do you know if to the best of your knowledge, this memo was given to the board by HCMFA. Correct? A. Yes. Q. Did - having reviewed the memo, is 	7 8 9 10 11 12 13	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes. Q. Do you know what the source of funding was for the first payment? A. I do not. Q. Did you ever ask anybody how	
9 10 11 12 13 14	 Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error? A. No. Q. Do you know if to the best of your knowledge, this memo was given to the board by HCMFA. Correct? A. Yes. 	7 8 9 10 11 12 13 14	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes. Q. Do you know what the source of funding was for the first payment? A. I do not. Q. Did you ever ask anybody how HCMFA — withdrawn. Did you ever ask anybody what the	
9 10 11 12 13 14 15	 Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error? A. No. Q. Do you know if to the best of your knowledge, this memo was given to the board by HCMFA. Correct? A. Yes. Q. Did - having reviewed the memo, is there anything that you're aware of in this memo where HCMFA tells the board that HCMLP is 	7 8 9 10 11 12 13 14 15	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes. Q. Do you know what the source of funding was for the first payment? A. I do not. Q. Did you ever ask anybody how HCMFA withdrawn. Did you ever ask anybody what the source of HCMFA's funding was to make the	
9 10 11 12 13 14 15	 Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error? A. No. Q. Do you know if to the best of your knowledge, this memo was given to the board by HCMFA. Correct? A. Yes. Q. Did - having reviewed the memo, is there anything that you're aware of in this 	7 8 9 10 11 12 13 14 15 16	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes. Q. Do you know what the source of funding was for the first payment? A. I do not. Q. Did you ever ask anybody how HCMFA withdrawn. Did you ever ask anybody what the source of HCMFA's funding was to make the payment on February 15th, 2019?	
9 10 11 12 13 14 15 16 17	 Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error? A. No. Q. Do you know if to the best of your knowledge, this memo was given to the board by HCMFA. Correct? A. Yes. Q. Did - having reviewed the memo, is there anything that you're aware of in this memo where HCMFA tells the board that HCMLP is responsible for the NAV error? A. No. 	7 8 9 10 11 12 13 14 15 16 17 18	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes. Q. Do you know what the source of funding was for the first payment? A. I do not. Q. Did you ever ask anybody how HCMFA withdrawn. Did you ever ask anybody what the source of HCMFA's funding was to make the payment on February 15th, 2019? A. Say that again.	
9 10 11 12 13 14 15 16 17 18	 Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error? A. No. Q. Do you know if to the best of your knowledge, this memo was given to the board by HCMFA. Correct? A. Yes. Q. Did having reviewed the memo, is there anything that you're aware of in this memo where HCMFA tells the board that HCMLP is responsible for the NAV error? 	7 8 9 10 11 12 13 14 15 16 17 18	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes. Q. Do you know what the source of funding was for the first payment? A. I do not. Q. Did you ever ask anybody how HCMFA withdrawn. Did you ever ask anybody what the source of HCMFA's funding was to make the payment on February 15th, 2019? A. Say that again. Q. Did you ever ask anybody what the	
9 10 11 12 13 14 15 16 17 18 19 20	Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error? A. No. Q. Do you know if to the best of your knowledge, this memo was given to the board by HCMFA. Correct? A. Yes. Q. Did having reviewed the memo, is there anything that you're aware of in this memo where HCMFA tells the board that HCMLP is responsible for the NAV error? A. No. And I don't think that they would. It would be irrelevant.	7 8 9 10 11 12 13 14 15 16 17 18 19 20	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes. Q. Do you know what the source of funding was for the first payment? A. I do not. Q. Did you ever ask anybody how HCMFA withdrawn. Did you ever ask anybody what the source of HCMFA's funding was to make the payment on February 15th, 2019? A. Say that again. Q. Did you ever ask anybody what the source of HCMFA's capital was to make that	
9 10 11 12 13 14 15 16 17 18 19 20 21	 Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error? A. No. Q. Do you know if to the best of your knowledge, this memo was given to the board by HCMFA. Correct? A. Yes. Q. Did having reviewed the memo, is there anything that you're aware of in this memo where HCMFA tells the board that HCMLP is responsible for the NAV error? A. No. And I don't think that they would. It would be irrelevant. MR. MORRIS: I move to strike the 	7 8 9 10 11 12 13 14 15 16 17 18	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes. Q. Do you know what the source of funding was for the first payment? A. I do not. Q. Did you ever ask anybody how HCMFA withdrawn. Did you ever ask anybody what the source of HCMFA's funding was to make the payment on February 15th, 2019? A. Say that again. Q. Did you ever ask anybody what the source of HCMFA's capital was to make that payment on February 15th?	
9 10 11 12 13 14 15 16 17 18 19 20 21 22	 Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error? A. No. Q. Do you know if to the best of your knowledge, this memo was given to the board by HCMFA. Correct? A. Yes. Q. Did having reviewed the memo, is there anything that you're aware of in this memo where HCMFA tells the board that HCMLP is responsible for the NAV error? A. No. And I don't think that they would. It would be irrelevant. MR. MORRIS: I move to strike the latter portion of the answer. 	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes. Q. Do you know what the source of funding was for the first payment? A. I do not. Q. Did you ever ask anybody how HCMFA withdrawn. Did you ever ask anybody what the source of HCMFA's funding was to make the payment on February 15th, 2019? A. Say that again. Q. Did you ever ask anybody what the source of HCMFA's capital was to make that payment on February 15th? A. I was told that it was a transfer	
9 10 11 12 13 14 15 16 17 18 19 20 21	 Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error? A. No. Q. Do you know if to the best of your knowledge, this memo was given to the board by HCMFA. Correct? A. Yes. Q. Did having reviewed the memo, is there anything that you're aware of in this memo where HCMFA tells the board that HCMLP is responsible for the NAV error? A. No. And I don't think that they would. It would be irrelevant. MR. MORRIS: I move to strike the 	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	and a second payment of approximately \$2.4 million was made on May 2nd. Do I have that right? A. Yes. Q. Do you know what the source of funding was for the first payment? A. I do not. Q. Did you ever ask anybody how HCMFA withdrawn. Did you ever ask anybody what the source of HCMFA's funding was to make the payment on February 15th, 2019? A. Say that again. Q. Did you ever ask anybody what the source of HCMFA's capital was to make that payment on February 15th? A. I was told that it was a transfer from HCMLP.	

1	Page 9 D. Sauter	0 1	D. Sauter	Page 91
2	A. Yes.	2		
3	Q. Who told you that?	3	Have you seen this before?	
4	A. Mr. Waterhouse.	4	A. I have.	
5		5		
6	Q. Okay. Do you know what the source was hold on one second.	6	Q. Did you ever have any discussions with anybody at any time during your	
		_		
7	And do you know what the source of	7	investigation about this page?	
8	the second payment was, that \$2.4 million on	8	A. I did at some point, and I don't	
9	May 2nd, 2019?	9	recall exactly when.	
10	A. HCMLP.	10	, and the second	
11	Q. Now, we saw earlier that one of the	11	. , ,	
12	notes was for \$2.4 million on May 2nd.	12		
13	Do you recall that?	13	, ,	
14	A. Yes. Yes.	14		
15	Q. Okay. So is it fair did you	15	3	
16	conclude as part of your investigation that at	16	11	
17	least the amount and the date of the payment	17		
18	matched the amount and the date of the note?	18		
19	A. I did on the second note, yes.	19	1 3 3	
20	Q. Okay. But the neither the amount	20		
21	nor the date of the first payment matched the	21	. ,	
22	amount or the date of the second note.	22		
23	Correct?	23	,	
24	A. That's correct.	24	11	
25	Q. Let's take a look at the second	25	through insurance proceeds?	
	Page 9			Page 93
1	D. Sauter	1	D. Sauter	
2	A. That's what it appears to show.	2	advisor to make GAF whole was approximately	
3	Q. And during your investigation, were	3	\$2.4 million?	
4	you aware that HCMFA had obtained almost	4	That's the 2,398,842 number there.	
5	\$5 million in connection with the NAV error	5	A. I've not done the math.	
6	that it was using to fund the payment to GAF?	6	Q. Well, that number there matches the	
7	A. I subsequently learned that, yes.	7	учини и и и и и и и и и и и и и и и и и и	
8	Q. And were you aware prior to the time	8	page, if we can scroll back up.	
9	that you signed your declaration I apologize	9	A. Yeah. No, I understand.	
10	if I asked this before withdrawn.	10		
11	Were you aware of the almost	11	•	
12	OF the William to the common and a common and the common		4:	
10	\$5 million in insurance proceeds that was	12		
13	that were obtained by HCMFA before you signed	13	A. That's total payment made to GAF.	
14	that were obtained by HCMFA before you signed your declaration?		A. That's total payment made to GAF. What I'm unclear about is that it's	
	that were obtained by HCMFA before you signed your declaration? A. I was not.	13	A. That's total payment made to GAF. What I'm unclear about is that it's the total amount out of pocket from the	
14	that were obtained by HCMFA before you signed your declaration? A. I was not. Q. So that's new information for you	13 14	A. That's total payment made to GAF. What I'm unclear about is that it's the total amount out of pocket from the advisor, which may be different, but	
14 15	that were obtained by HCMFA before you signed your declaration? A. I was not.	13 14 15	A. That's total payment made to GAF. What I'm unclear about is that it's the total amount out of pocket from the advisor, which may be different, but	
14 15 16 17	that were obtained by HCMFA before you signed your declaration? A. I was not. Q. So that's new information for you	13 14 15 16	A. That's total payment made to GAF. What I'm unclear about is that it's the total amount out of pocket from the advisor, which may be different, but Q. Do you know what the total out of	
14 15 16	that were obtained by HCMFA before you signed your declaration? A. I was not. Q. So that's new information for you since the time you signed your declaration?	13 14 15 16	A. That's total payment made to GAF. What I'm unclear about is that it's the total amount out of pocket from the advisor, which may be different, but Q. Do you know what the total out of pocket was from the advisor?	
14 15 16 17 18 19	that were obtained by HCMFA before you signed your declaration? A. I was not. Q. So that's new information for you since the time you signed your declaration? A. Yes.	13 14 15 16 17 18	A. That's total payment made to GAF. What I'm unclear about is that it's the total amount out of pocket from the advisor, which may be different, but Q. Do you know what the total out of pocket was from the advisor? A. I don't.	
14 15 16 17 18	that were obtained by HCMFA before you signed your declaration? A. I was not. Q. So that's new information for you since the time you signed your declaration? A. Yes. Q. Okay. Were you aware at the time	13 14 15 16 17 18	A. That's total payment made to GAF. What I'm unclear about is that it's the total amount out of pocket from the advisor, which may be different, but Q. Do you know what the total out of pocket was from the advisor? A. I don't. (Simultaneous crosstalk.)	
14 15 16 17 18 19 20 21	that were obtained by HCMFA before you signed your declaration? A. I was not. Q. So that's new information for you since the time you signed your declaration? A. Yes. Q. Okay. Were you aware at the time you signed your declaration that HCMFA had paid	13 14 15 16 17 18 19	A. That's total payment made to GAF. What I'm unclear about is that it's the total amount out of pocket from the advisor, which may be different, but Q. Do you know what the total out of pocket was from the advisor? A. I don't. (Simultaneous crosstalk.) THE WITNESS: what's listed here.	
14 15 16 17 18 19 20	that were obtained by HCMFA before you signed your declaration? A. I was not. Q. So that's new information for you since the time you signed your declaration? A. Yes. Q. Okay. Were you aware at the time you signed your declaration that HCMFA had paid an insurance deductible of almost \$250,000?	13 14 15 16 17 18 19 20 21	A. That's total payment made to GAF. What I'm unclear about is that it's the total amount out of pocket from the advisor, which may be different, but Q. Do you know what the total out of pocket was from the advisor? A. I don't. (Simultaneous crosstalk.) THE WITNESS: what's listed here. Q. And do you understand that a total	
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1	Page D. Sauter	94 1	D. Sauter	Page 95
2	believe that the source of the funding is	2	BY MR. MORRIS:	
3	anything other than what's set forth on this	3	Q. And that's because you believe the	
4	page?	4	notes were executed by mistake. Correct?	
5	A. Idon't.	5	A. I believe that Highland made the NAV	
6	Q. And the \$2.4 million, that's the	6	error and was responsible for making GAF whole,	
7	\$2.4 million that HCMFA obtained from Highland	7	albeit vis-‡vis HCMFA, its advisor.	
8	on May 2nd. Correct?	8	Q. Okay. So because Highland created	
9	MR. RUKAVINA: Objection.	9	the NAV error, your understanding based on your	
10	The witness is not qualified to	10	discussions with Mr. Post and Mr. Norris is	
11	answer that.	11	that Highland paid the \$7.4 million to HCMFA	
12	Q. During the course of your	12	not as a loan but as compensation for the error	
13	investigation, did you learn that Highland	13	•	
14	transferred \$2.4 million to HCMFA on May 2nd,	14		
	2019 so that it could pay GAF?	15	A. That would not be based on my	
15 16	A. That's what I was told.	16	discussions with Mr. Post and Mr. Norris.	
17		17		
18	Q. Okay. Is it your conclusion that		But yes, your conclusion is	
	Highland was responsible for the \$7.44 million	18	accurate.	
19 20	estimated net loss resulting from the NAV error?	19 20	Q. Okay. And let's be really clear what the conclusion is.	
20				
21	MR. RUKAVINA: Objection.	21	It's your conclusion that because	
22	This witness is not an expert, and	22	Highland was negligent in making the NAV error,	
23	he has no personal knowledge.	23	that when it paid \$7.4 million to HCMFA on	
24	THE WITNESS: Yes, I believe that	24		
25	that's accurate.	25	compensation for its negligent conduct and not	
1	Page D. Sauter		D. Sauter	Page 97
1	as a loan. Correct?	1		
3				
3		2	not the investigation generally.	
1	A. I didn't say negligent, and I don't	3	THE WITNESS: Yes.	
4	A. I didn't say negligent, and I don't know that I can make that conclusion.	3 4	THE WITNESS: Yes. And as I said, the May declaration,	
5	A. I didn't say negligent, and I don't know that I can make that conclusion. But it should have been indemnity	3 4 5	THE WITNESS: Yes. And as I said, the May declaration, I was unaware of the \$5 million in insurance	
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5 6 7	A. I didn't say negligent, and I don't know that I can make that conclusion. But it should have been indemnity and reimbursement for the error that Highland created.	3 4 5 6 7	THE WITNESS: Yes. And as I said, the May declaration, I was unaware of the \$5 million in insurance payments. BY MR. MORRIS:	
5 6 7 8	A. I didn't say negligent, and I don't know that I can make that conclusion. But it should have been indemnity and reimbursement for the error that Highland created. Q. Okay. Can you tell me why HCMFA	3 4 5 6 7 8	THE WITNESS: Yes. And as I said, the May declaration, I was unaware of the \$5 million in insurance payments. BY MR. MORRIS: Q. Now that you're aware of it, does it	
5 6 7 8 9	A. I didn't say negligent, and I don't know that I can make that conclusion. But it should have been indemnity and reimbursement for the error that Highland created. Q. Okay. Can you tell me why HCMFA took \$5 million from an insurance company at	3 4 5 6 7 8 9	THE WITNESS: Yes. And as I said, the May declaration, I was unaware of the \$5 million in insurance payments. BY MR. MORRIS: Q. Now that you're aware of it, does it cause you to question your conclusion that the	
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1	D. Souter	Page 98	1	D. Sautor	Page 99
1	D. Sauter allowed to ask him if it changes his		1 2	D. Sauter answer. There's no point in you and I arguing	
3	conclusion.		3	about it now.	
4	MR. RUKAVINA: Let me just explain		4	If you feel my objection is	
5	what I understand, what's going on here.		5	inappropriate, then you have your rights	
6	He undertook an evidentiary and		6	intact.	
7	factual conclusion, which is fair game for you		7	MR. MORRIS: All right. I'm going	
8	to ask about. Pardon me.			to continue to ask questions.	
9	He's told you that he didn't know		9	BY MR. MORRIS:	
10	about this. His declaration says I'm		10	Q. Sir, you had this document before	
11	paraphrasing it appears that there was a		11	you signed your declaration. Correct?	
12			12	A. I did.	
13	He has never claimed to have		13	Q. Okay. And your conclusion was that	
14	personal knowledge. He has never claimed to be		14	because Highland made the NAV mistake, the	
15	an expert. He is not going to be a trial		15	\$7.4 million payment was supposed to be	
16	witness. He has never testified and is not		16	compensation and not in the form of a loan.	
17	testifying today that there was a mistake.		17	Correct?	
18	But most importantly, and why I'm		18	MR. RUKAVINA: Objection, form.	
19	instructing him not to answer, is because the		19	THE WITNESS: Correct.	
20	issue of how this payment relates to the		20	Q. Okay. And now the document that you	
21	insurance payable, which again arose after his		21	had before you signed your declaration	
22	declaration and is something that he and I have		22	discloses that HCMFA received almost \$5 million	
23	discussed and is my work product. That is not		23	as part of the insurance proceeds in connection	
24			24	with the NAV error. Correct?	
25	So I am instructing him not to		25	A. Yes.	
1	D. Sauter	Page 100	1	D. Sauter	Page 101
2	Q. Okay. Does that cause you to change		2	Q. Have you ever asked anybody?	
3	the conclusion that you reached as set forth in		3	A. No.	
4	your declaration?		4	MR. RUKAVINA: You've got to wait a	
5	A. I don't know enough about the		5	second, Mr. Sauter, before answering.	
6	insurance proceeds, the insurance policy and		6	Go ahead.	
7	what transpired at the time to make that		7	Q. During the course of your	
8	determination.		_		
9	Q. Do you know if HCMFA has ever		8	investigation, did anybody tell you that on	
_	Q. Do you know in Florin A that ever		9	investigation, did anybody tell you that on May 3rd, 2019, HCMFA needed another \$5 million?	
10	informed the insurance carrier that HCMLP was				
	•		9	May 3rd, 2019, HCMFA needed another \$5 million?	
10	informed the insurance carrier that HCMLP was		9 10	May 3rd, 2019, HCMFA needed another \$5 million? A. Not during the course of my initial	
10 11	informed the insurance carrier that HCMLP was responsible for the NAV error?		9 10 11	May 3rd, 2019, HCMFA needed another \$5 million? A. Not during the course of my initial investigation.	
10 11 12	informed the insurance carrier that HCMLP was responsible for the NAV error? A. I do not.		9 10 11 12	May 3rd, 2019, HCMFA needed another \$5 million? A. Not during the course of my initial investigation. Q. Are you aware of that today?	
10 11 12 13	informed the insurance carrier that HCMLP was responsible for the NAV error? A. I do not. Q. Did you ever ask anybody?		9 10 11 12 13	May 3rd, 2019, HCMFA needed another \$5 million? A. Not during the course of my initial investigation. Q. Are you aware of that today? A. I am, yes.	
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10 11 12 13 14 15	informed the insurance carrier that HCMLP was responsible for the NAV error? A. I do not. Q. Did you ever ask anybody? A. I did not. Q. As part of your investigation, did you try to determine whether HCMFA ever told		9 10 11 12 13 14 15	May 3rd, 2019, HCMFA needed another \$5 million? A. Not during the course of my initial investigation. Q. Are you aware of that today? A. I am, yes. Q. Okay. And do you understand that that \$5 million was needed in order for HCMFA	
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4	D. Sauter	Page 102	1	D. Sauter	Page 103
1 2	D. Sauter I don't get it. These are facts.		1 2	calling him at trial because he conducted an	
3	And I'm not limited to his declaration. He's		3	-	
				investigation. And I don't think that I need to	
4	here under a subpoena. I can ask him whatever		4		
5	I want factually.		5	stop asking questions as of the date of his	
6	I don't understand, Davor.		6	declaration. I'm asking purely factual	
7	MR. RUKAVINA: Well, there's three		7	questions.	
8	things.		8	So you know, if you want to continue	
9	You're generally right, you can ask		9	to direct him not to answer, we'll deal with	
10	him whatever you want factually. I'm not		10	it, but I'm going to continue to ask him	
11	saying that he I haven't prevented you from		11	factual questions.	
12	asking factually. That's issue one.		12	MR. RUKAVINA: To me, this is	
13	Issue two, he's not a trial witness.		13	(Simultaneous crosstalk.)	
14	His role is limited to the motion to amend,		14	BY MR. MORRIS:	
15	which was granted by consent.		15	Q. Mr. Sauter, do you understand that	
16	And issue three, the question you're		16	the \$5 million was needed by HCMFA on May 3rd,	
17	asking him right now, if he has any knowledge,		17	2019 to pay a consent fee?	
18	he can have only through discussions with me		18	MR. RUKAVINA: I'm going to instruct	
19	and things he's learned through me in this		19	you not to answer that, Mr. Sauter.	
20	litigation. He's told you he did not know		20	Q. Are you going to follow your	
21	about this during his investigation.		21	counsel's instructions?	
22	So I'm going to stick by my		22	A. Iam.	
23	instruction not to answer that, Mr. Sauter.		23	Q. Do you know what a consent fee is,	
24	MR. MORRIS: And I'm going to tell		24	sir?	
25	you he is a trial witness. I will certainly be		25	A. I don't.	
_	D.O. 1	Page 104	_	D.O. /	Page 105
1	D. Sauter		1	D. Sauter	
2	Q. Did you ever have withdrawn.			you?	
3	Did anybody ever tell you that		3	A. It was payment for a consent fee.	
4	Highland was responsible for any consent fee		4	Q. All right. Okay.	
5	that HCMFA paid?		5	And who told you that?	
6	MR. RUKAVINA: You're instructed not		6	A. Mr. Norris.	
7	to answer that to the extent that whoever told				
8			7	Q. And did Mr. Norris tell you that	
	you that would be an attorney.		8	Highland had any responsibility for the payment	
9	BY MR. MORRIS:		8	Highland had any responsibility for the payment of that consent fee by HCMFA?	
10	BY MR. MORRIS: Q. Okay. Did anybody other than an		8 9 10	Highland had any responsibility for the payment of that consent fee by HCMFA? A. I don't know that we got into that.	
10 11	BY MR. MORRIS: Q. Okay. Did anybody other than an attorney ever tell you that Highland was		8 9 10 11	Highland had any responsibility for the payment of that consent fee by HCMFA? A. I don't know that we got into that. Q. Okay. Did anybody else tell you	
10 11 12	BY MR. MORRIS: Q. Okay. Did anybody other than an attorney ever tell you that Highland was responsible for any consent fee ever paid by		8 9 10 11 12	Highland had any responsibility for the payment of that consent fee by HCMFA? A. I don't know that we got into that. Q. Okay. Did anybody else tell you that the May 3rd, 2019 \$5 million payment was	
10 11 12 13	BY MR. MORRIS: Q. Okay. Did anybody other than an attorney ever tell you that Highland was responsible for any consent fee ever paid by HCMFA?		8 9 10 11 12 13	Highland had any responsibility for the payment of that consent fee by HCMFA? A. I don't know that we got into that. Q. Okay. Did anybody else tell you that the May 3rd, 2019 \$5 million payment was made so that HCMFA could pay the consent fee?	
10 11 12 13 14	BY MR. MORRIS: Q. Okay. Did anybody other than an attorney ever tell you that Highland was responsible for any consent fee ever paid by HCMFA? A. That Highland was responsible for		8 9 10 11 12 13 14	Highland had any responsibility for the payment of that consent fee by HCMFA? A. I don't know that we got into that. Q. Okay. Did anybody else tell you that the May 3rd, 2019 \$5 million payment was made so that HCMFA could pay the consent fee? MR. RUKAVINA: Again, I'll instruct	
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10 11 12 13 14 15 16 17 18 19 20 21 22 23	BY MR. MORRIS: Q. Okay. Did anybody other than an attorney ever tell you that Highland was responsible for any consent fee ever paid by HCMFA? A. That Highland was responsible for paying a consent fee? Q. That Highland was responsible for any consent fee that was paid by HCMFA. A. I don't believe so. Q. During your discussions as part of your investigation with Mr. Norris and Mr. Post and Mr. Dondero and Mr. Waterhouse, did anybody tell you why Highland paid HCMFA \$5 million on May 3rd, 2019?		8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Highland had any responsibility for the payment of that consent fee by HCMFA? A. I don't know that we got into that. Q. Okay. Did anybody else tell you that the May 3rd, 2019 \$5 million payment was made so that HCMFA could pay the consent fee? MR. RUKAVINA: Again, I'll instruct you not to answer the extent you learned anything from an attorney. THE WITNESS: I don't believe so. Q. Okay. Did you speak with Mr. Waterhouse about the \$5 million consent fee that Mr. Norris mentioned to you? A. I have not spoken with Mr. Waterhouse for quite some time about this, since he's represented by counsel.	
10 11 12 13 14 15 16 17 18 19 20 21 22	BY MR. MORRIS: Q. Okay. Did anybody other than an attorney ever tell you that Highland was responsible for any consent fee ever paid by HCMFA? A. That Highland was responsible for paying a consent fee? Q. That Highland was responsible for any consent fee that was paid by HCMFA. A. I don't believe so. Q. During your discussions as part of your investigation with Mr. Norris and Mr. Post and Mr. Dondero and Mr. Waterhouse, did anybody tell you why Highland paid HCMFA \$5 million on		8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Highland had any responsibility for the payment of that consent fee by HCMFA? A. I don't know that we got into that. Q. Okay. Did anybody else tell you that the May 3rd, 2019 \$5 million payment was made so that HCMFA could pay the consent fee? MR. RUKAVINA: Again, I'll instruct you not to answer the extent you learned anything from an attorney. THE WITNESS: I don't believe so. Q. Okay. Did you speak with Mr. Waterhouse about the \$5 million consent fee that Mr. Norris mentioned to you? A. I have not spoken with Mr. Waterhouse for quite some time about this,	

Page 109

1	Paç D. Sauter	ge 110	1	D. Sauter	Page 111
2	Q. Okay. Have you ever seen any of the		2	A. Could you clarify the question.	
	reports that the advisors sent to the retail		3	Q. Sure.	
	board in connection with the 15(c) annual		4	Have you ever seen any of the	
	review?			eports that were issued by the advisors to the	
6	MR. RUKAVINA: Now, this one,			etail board in the fall of 2020 in connection	
-	Mr. Sauter, I am going to instruct you not to			vith the 15(c) review?	
_	answer.		3	MR. RUKAVINA: Mr. Sauter, I'm	
9	MR. MORRIS: Have you ever seen the			nstructing you not to answer that if your	
10	document? That's what, you're going to			answer involves working with me in this	
11	instruct him not to	1		adversary proceeding.	
12	MR. RUKAVINA: Don't answer that.		2	If you saw it otherwise as part of	
13	Don't answer that. That relates to discovery	1		business operation, that's fine.	
14	and work product privilege.		3 i 4	THE WITNESS: In the fall of 2020, I	
15				would have had I would not have been	
	The document was produced to you. Mr. Sauter helped me find that document. Other	١.			
	•	١.	_	nvolved and I would not have seen anything sent to the board.	
17 18	than that, nothing about that document and his	1		Sent to the board. BY MR. MORRIS:	
	knowledge is fair game.				
19	MR. MORRIS: Well, I'm going to ask	1		Q. All right. Well, let's put it up on	
20	my questions, and you can keep directing him	2		he screen. It's, I think, a document that was	
21	not to answer.	2		previously marked as Deposition Exhibit 59.	
22	BY MR. MORRIS:	2		(Exhibit 59, Memo dated 10/23/20,	
23	Q. Mr. Sauter, have you ever seen any	2		HCMFAS 000025-031, marked for identification.)	
	of the reports that were issued by the advisors		4	Q. Have you ever seen this document	
25	to the funds?	2	:5 k	pefore, sir?	
1	Pag D. Sauter	ge 112	1	D. Sauter	Page 113
1		,			
2	A. Could you scroll down.			eview in October of 2020?	
	Q. Sure.		3	A. I think that's accurate.	
4	A. (Reviewing document.)				
5	Q. We can keep going.	;	4 - ว	MR. MORRIS: We're going to do the	
6			5 3	0(b)(6) deposition on December 1st?	
7	A. All right.		5 3 6	0(b)(6) deposition on December 1st? MR. RUKAVINA: I think I'm waiting	
	What's the date on this?	-	5 3 6 7 fc	60(b)(6) deposition on December 1st? MR. RUKAVINA: I think I'm waiting or you to confirm.	
8	What's the date on this? Q. October 23rd, 2020.	8	5 3 6 7 fo	0(b)(6) deposition on December 1st? MR. RUKAVINA: I think I'm waiting or you to confirm. I think that's what	
8	What's the date on this? Q. October 23rd, 2020. A. I honestly don't think I would have	8	5 3 6 7 fo 8	MR. RUKAVINA: I think I'm waiting or you to confirm. I think that's what MR. MORRIS: Let's confirm that	
8 9 10	What's the date on this? Q. October 23rd, 2020. A. I honestly don't think I would have been involved in that or seen that.	1	5 3 6 7 fo 8 9	MR. RUKAVINA: I think I'm waiting or you to confirm. I think that's what MR. MORRIS: Let's confirm that ight now.	
8 9 10 11	What's the date on this? Q. October 23rd, 2020. A. I honestly don't think I would have been involved in that or seen that. Q. Okay. Did you ever ask anybody as	1	5 3 6 7 fo 8 9 0 r	MR. RUKAVINA: I think I'm waiting or you to confirm. I think that's what MR. MORRIS: Let's confirm that right now. I'll send you an e-mail, but I	
8 9 10 11 12	What's the date on this? Q. October 23rd, 2020. A. I honestly don't think I would have been involved in that or seen that. Q. Okay. Did you ever ask anybody as part of your investigation – withdrawn.	1 1 1	5 3 6 7 for 8 9 0 r 1 2 j	MR. RUKAVINA: I think I'm waiting or you to confirm. I think that's what MR. MORRIS: Let's confirm that ight now. I'll send you an e-mail, but I	
8 9 10 11 12 13	What's the date on this? Q. October 23rd, 2020. A. I honestly don't think I would have been involved in that or seen that. Q. Okay. Did you ever ask anybody as part of your investigation — withdrawn. Are you aware that the advisors were	1 1 1	5 3 6 7 fc 8 9 0 r 1 2 j	MR. RUKAVINA: I think I'm waiting or you to confirm. I think that's what MR. MORRIS: Let's confirm that ight now. I'll send you an e-mail, but I ust MR. RUKAVINA: Okay. 10 a.m.,	
8 9 10 11 12 13	What's the date on this? Q. October 23rd, 2020. A. I honestly don't think I would have been involved in that or seen that. Q. Okay. Did you ever ask anybody as part of your investigation — withdrawn. Are you aware that the advisors were asked to provide information to the retail	1 1 1 1 1	5 3 6 7 fd 8 9 0 r 1 1 2 j	MR. RUKAVINA: I think I'm waiting or you to confirm. I think that's what MR. MORRIS: Let's confirm that right now. I'll send you an e-mail, but I ust MR. RUKAVINA: Okay. 10 a.m., Dallas?	
8 9 10 11 12 13 14	What's the date on this? Q. October 23rd, 2020. A. I honestly don't think I would have been involved in that or seen that. Q. Okay. Did you ever ask anybody as part of your investigation — withdrawn. Are you aware that the advisors were asked to provide information to the retail board as to the obligations that it owed to	1 1 1 1 1 1	5 3 6 7 fo 8 9 0 r 1 2 j 3 4 [MR. RUKAVINA: I think I'm waiting or you to confirm. I think that's what MR. MORRIS: Let's confirm that right now. I'll send you an e-mail, but I ust MR. RUKAVINA: Okay. 10 a.m., Dallas? MR. MORRIS: Yeah, that sounds fair.	
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4	Pa D. Sauter	ge 114	1	D. Sauter	Page 115
1 2	D. Sauter mistake.		1	D. Sauter the payments to the fund.	
3			3	A transfer was made. A note was	
4	Do I have that right? A. Yes.			executed without any analysis.	
5	Q. Okay. What does "mutual" excuse		5	Q. And do you have anything else to add	
	me – what does "mutual mistake" mean?			to that?	
7	MR. RUKAVINA: Are you asking for		7	A. I don't think so.	
	his legal opinion or how he used it in this		8	Q. Okay. You also say that the notes	
	declaration?			are void for lack of consideration.	
10	MR. MORRIS: Only how he used it in		10	Do I have that right?	
11	the declaration.		11	A. Yes.	
12	THE WITNESS: Well, wouldn't that be		12	Q. You don't dispute that Highland paid	
13	a legal conclusion because it's an affirmative			HCMFA \$2.4 million on May 2nd, 2019. Correct?	
14	defense?		14	A. No.	
15	BY MR. MORRIS:		15	Q. And you don't dispute that Highland	
16	Q. Well, I don't know. It's in your		16	paid HCMFA \$5 million on May 3rd, 2019.	
17	declaration. I'm just asking you what you			Correct?	
18	meant when you used the phrase withdrawn.		18	A. I mean, I believe that's right.	
19	Let me ask a better question. Maybe		19	That's what I've been told.	
20	it's my fault.		20	So yeah, I don't dispute that.	
21	Mr. Sauter, what did you mean when		21	Q. Your reference to "a lack of	
22	you used the phrase "mutual mistake"?		22	consideration" means only that, in your	
23	A. What I meant is that there was no		23	opinion, the money should not have been	
24	analysis or consideration of what had			transferred in the form of a loan.	
	transpired and who is legally responsible for		25	Do I have that right?	
	transpired and write to togathy reoperiologic for			Do mayo that ngm.	
1	D. Sauter	ge 116	1	D. Sauter	Page 117
2	A. You do.			papering a transaction like a \$7.4 million	
3	Q. It does not mean that HCMFA did not		_		
4			3	IOAN. AND THY UNDERSIANDING OF THE DIOCESS. AS	
	receive an amount of money exactly equal to the			loan. And my understanding of the process, as described to me by Frank Waterhouse, was not	
5	receive an amount of money exactly equal to the principal amount of the notes. Correct?		4	described to me by Frank Waterhouse, was not	
5 6	principal amount of the notes. Correct?		4	described to me by Frank Waterhouse, was not the proper process.	
6	principal amount of the notes. Correct? A. Based upon what I've been told,		4 5 6	described to me by Frank Waterhouse, was not the proper process. Q. Is there a policy or a law that	
6	principal amount of the notes. Correct? A. Based upon what I've been told, correct.		4 5 6 7	described to me by Frank Waterhouse, was not the proper process. Q. Is there a policy or a law that requires a particular process to be followed	
6 7 8	principal amount of the notes. Correct? A. Based upon what I've been told, correct. Q. Okay. You also write here that		4 5 6 7	described to me by Frank Waterhouse, was not the proper process. Q. Is there a policy or a law that requires a particular process to be followed that you're aware of?	
6 7 8 9	principal amount of the notes. Correct? A. Based upon what I've been told, correct.		4 5 6 7 8	described to me by Frank Waterhouse, was not the proper process. Q. Is there a policy or a law that requires a particular process to be followed that you're aware of? A. What I would expect is	
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	Page 118	Т		Page 119
1	D. Sauter	1	D. Sauter	
2	What limits are you aware of that	2	There's a number of factors that come into it.	
3	existed on Mr. Waterhouse's authority to sign	3	Q. But you didn't	
4	notes on behalf of HCMFA in May of 2019?	4	A. So	
5	A. I don't know what the HCMFA what	5	Q. But you made no inquiry as to any of	
6	the partnership agreement says, or I should say	6	those issues. Correct?	
7	the general partnership agreement says.	7	A. I made an inquiry of Mr. Waterhouse	
8	But what I would expect is the full	8	as it relates to this transaction.	
9	participation of legal, accounting and then	9	Q. Okay. And again, Mr. Waterhouse did	
10		10	not admit that he was not authorized to sign	
11	Q. Do you know if Mr. Waterhouse has	11	these notes. Correct?	
12	3	12	A. Sorry. He did not admit that he was	
13		13	not authorized to sign the notes, correct.	
14		14	Q. Okay.	
15	Q. Did you do as part of your	15	MR. MORRIS: Let's just take a	
16	investigation, before reaching your conclusion	16	five-minute break. I may be done.	
17	that Mr. Waterhouse didn't have proper	17	It's 4:28. Let's just come back at	
18	authority, did you try to determine whether in	18	4:35 so I can take a break.	
19	fact he had previously issued notes on behalf	19	(Recess was taken from 3:29 p.m. to	
20	of HCMFA or other affiliates?	20	3:37 p.m.)	
21	A. I can't answer your question without	21	MR. MORRIS: Mr. Sauter, I greatly	
22	knowing the facts surrounding the execution of	22	appreciate your time and attention today. I	
23	any particular note.	23	have no further questions.	
24	I mean, I think it matters the	24	THE WITNESS: Okay.	
25	amount of the note, the term of the note.	25	MR. RUKAVINA: I'll pass the	
	Page 120	+	5	Page 121
1	D. Sauter	1	District of Columbia, to wit:	
2	witness, save my questions till trial. Thank	2	I, Stacey L. Daywalt, a Notary	
3	you.	3	Public of the District of Columbia, do hereby	
4	MR. MORRIS: Thank you, sir. Have a	4	certify that the within-named witness remotely	
5	good day.	5	appeared before me at the time and place herein	
6	MR. RUKAVINA: Madam Reporter, just		set out, and after having been duly sworn by	
7	before we're done, just to confirm, the witness		me, according to law, was examined by Counsel.	
8	does want his 30 days to read and review, so	8	I further certify that the	
9	please send the transcript to me with exhibits.	9	examination was recorded stenographically by me	
10	, ,	10	and this transcript is a true record of the	
11	need a copy?	11	proceedings.	
12				
'-	MR. AIGEN: Yeah, we'll order one,	12	I further certify that I am not of	
13	MR. AIGEN: Yeah, we'll order one, just regular time. Doesn't need to be	12 13	counsel to any of the parties, nor an employee	
13 14	just regular time. Doesn't need to be expedited.	13 14	counsel to any of the parties, nor an employee of counsel, nor related to any of the parties,	
13	just regular time. Doesn't need to be	13 14 15	counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of	
13 14 15 16	just regular time. Doesn't need to be expedited. (Time Noted: 3:38 p.m.)	13 14 15 16	counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.	
13 14 15 16 17	just regular time. Doesn't need to be expedited. (Time Noted: 3:38 p.m.)	13 14 15	counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action. As witness my hand and Notarial Seal	
13 14 15 16	just regular time. Doesn't need to be expedited. (Time Noted: 3:38 p.m.)	13 14 15 16 17 18	counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.	
13 14 15 16 17	just regular time. Doesn't need to be expedited. (Time Noted: 3:38 p.m.)	13 14 15 16 17 18 19	counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action. As witness my hand and Notarial Seal	
13 14 15 16 17 18	just regular time. Doesn't need to be expedited. (Time Noted: 3:38 p.m.) DENNIS C. SAUTER	13 14 15 16 17 18	counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action. As witness my hand and Notarial Seal	
13 14 15 16 17 18	just regular time. Doesn't need to be expedited. (Time Noted: 3:38 p.m.) DENNIS C. SAUTER	13 14 15 16 17 18 19	counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action. As witness my hand and Notarial Seal	
13 14 15 16 17 18 19 20	just regular time. Doesn't need to be expedited. (Time Noted: 3:38 p.m.) DENNIS C. SAUTER Subscribed and sworn to before me	13 14 15 16 17 18 19 20	counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action. As witness my hand and Notarial Seal	
13 14 15 16 17 18 19 20 21	just regular time. Doesn't need to be expedited. (Time Noted: 3:38 p.m.) DENNIS C. SAUTER Subscribed and sworn to before me	13 14 15 16 17 18 19 20 21	counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action. As witness my hand and Notarial Seal this 17th day of November, 2021.	
13 14 15 16 17 18 19 20 21 22	just regular time. Doesn't need to be expedited. (Time Noted: 3:38 p.m.) DENNIS C. SAUTER Subscribed and sworn to before me	13 14 15 16 17 18 19 20 21 22	counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action. As witness my hand and Notarial Seal this 17th day of November, 2021. Stacey L. Daywalt, Notary Public	

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_	WITNESS EXAMINATION BY PAGE	2	DATE OF DEPOSITION:	
3 4	DENNIS C. SAUTER BY MR. MORRIS 4	3	NAME OF WITNESS:	
5	DENNIS C. SAUTER BT WIN. WORKIS 4	4	Reason Codes:	
_	EXHIBITS	5	To clarify the record.	
6 7	PREVIOUSLY MARKED EXHIBITS PAGE LINE	6	2. To conform to the facts.	
8	Exhibit 181	7	To correct transcription errors.	
9	Declaration of Dennis C. Sauter, Jr. 24 3		Page Line Reason	
	Exhibit 54	9	From to	
11	E-mail chain with attachment dated 5/2/19		Page Line Reason	
	D-CNL003777-779 25 25		From to	
12	Exhibit 57		Page Line Reason	
13	Promissory Note dated 5/3/19		From to	
14	D-CNL003764-65 29 5	14	Page Line Reason	
14	Exhibit 45	15	From to	
15	Consolidated Financial Statements	1	Page Line Reason	
16	and Supplemental Information December 31, 2018		From to	
47	D-CNL002273-296 72 19	18	Page Line Reason	
17	Exhibit 182	19	From to	
18		20	Page Line Reason	
19	Exhibit 59 Memo dated 10/23/20	21	From to	
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	7
5	7
1 Exhibit 17 Email from James Seery to 88	1 understood my question; okay? 2 A. Yeah.
James Dondero, Jan 7, 2021, demand	
on promissory note	3 MR. MORRIS: Objection.
4 5 F 1 11 1 10 F 116 W 1 1 1 1 1 1 2 00	4 Q. (BY MR. RUKAVINA) Sometimes Counsel will
5 Exhibit 18 Email from Kristin Hendrix, Jan 12, 90	5 make objections. Unless he instructs you not to
6 2021, NexPoint Note to HCMLP	6 answer, you're still required to answer my questions.
7	7 A. Okay.
8	8 Q. Now, in preparation for this deposition, did
9	9 you read the deposition transcript or any part of it of
10	10 Frank Waterhouse?
11	11 A. I did not.
12	12 Q. Did anyone provide you a synopsis or summary
13	13 of it?
14	14 A. Maybe a few bits and pieces, but
15	MR. RUKAVINA: Off the record for a second.
16	16 (Off the record.)
17	17 Q. (BY MR. RUKAVINA) What do you mean bits and
18	18 pieces?
19	19 A. I don't recall anything specific that was
20	20 said, other than it was very long.
21	21 Q. Did you talk to Frank Waterhouse about it?
22	22 A. Did not.
23	23 Q. Other than Highland's legal counsel, did you
24	24 talk to anyone else about or strike that.
25	25 Other than Highland's legal counsel, did you
	25 Other than Highland's regal counsel, did you
6	8
1 KRISTIN HENDRIX,	1 talk to anyone about Frank Waterhouse's deposition from
2 having been first duly sworn, testified as follows:	2 last week?
3 EXAMINATION	3 A. I did not.
4 Q. (BY MR. RUKAVINA) Good morning. If you'll	4 Q. Did you review strike that.
5 state your name.	5 Did you see any of the video of
6 A. Kristin Hendrix.	6 Mr. Waterhouse's deposition?
7 Q. We're doing this both ways. You're on the	7 A. Nope.
8 Zoom remotely and they can see you, but I would ask	8 Q. Same questions now for Mr. Seery, S-e-e-r-y.
9 that you and I maintain eye contact. Of course, if	9 Did you read any portion or the whole of
10 someone is asking you on the Zoom, then maintain	10 Mr. Seery's deposition from last week?
11 contact with them, if that's okay with you.	11 A. I did not.
12 A. Sure.	12 Q. See any of the video?
13 Q. Have you been deposed before?	13 A. No.
13 Q. Have you been deposed before?14 A. No.	13 A. No. 14 Q. Did you see any synopsis or summary of his
 13 Q. Have you been deposed before? 14 A. No. 15 Q. So I'm sure your counsel explained to you, 	13 A. No. 14 Q. Did you see any synopsis or summary of his 15 deposition?
 13 Q. Have you been deposed before? 14 A. No. 15 Q. So I'm sure your counsel explained to you, 16 but very quickly, you understand that you're testifying 	 13 A. No. 14 Q. Did you see any synopsis or summary of his 15 deposition? 16 A. No.
 13 Q. Have you been deposed before? 14 A. No. 15 Q. So I'm sure your counsel explained to you, 16 but very quickly, you understand that you're testifying 17 under oath and penalty of perjury as though you were in 	 13 A. No. 14 Q. Did you see any synopsis or summary of his 15 deposition? 16 A. No. 17 Q. Did you talk to him about his deposition?
13 Q. Have you been deposed before? 14 A. No. 15 Q. So I'm sure your counsel explained to you, 16 but very quickly, you understand that you're testifying 17 under oath and penalty of perjury as though you were in 18 a court of law?	 13 A. No. 14 Q. Did you see any synopsis or summary of his 15 deposition? 16 A. No. 17 Q. Did you talk to him about his deposition? 18 A. I did not.
13 Q. Have you been deposed before? 14 A. No. 15 Q. So I'm sure your counsel explained to you, 16 but very quickly, you understand that you're testifying 17 under oath and penalty of perjury as though you were in 18 a court of law? 19 A. Yes.	 13 A. No. 14 Q. Did you see any synopsis or summary of his 15 deposition? 16 A. No. 17 Q. Did you talk to him about his deposition? 18 A. I did not. 19 Q. Other than talking to Highland's counsel, did
Q. Have you been deposed before? A. No. Q. So I'm sure your counsel explained to you, but very quickly, you understand that you're testifying under oath and penalty of perjury as though you were in a court of law? A. Yes. Q. And you understand my job is to ask clear	13 A. No. 14 Q. Did you see any synopsis or summary of his 15 deposition? 16 A. No. 17 Q. Did you talk to him about his deposition? 18 A. I did not. 19 Q. Other than talking to Highland's counsel, did 20 you talk to anyone about Mr. Seery's deposition?
Q. Have you been deposed before? A. No. Q. So I'm sure your counsel explained to you, but very quickly, you understand that you're testifying under oath and penalty of perjury as though you were in a court of law? A. Yes. Q. And you understand my job is to ask clear questions that you understand?	13 A. No. 14 Q. Did you see any synopsis or summary of his 15 deposition? 16 A. No. 17 Q. Did you talk to him about his deposition? 18 A. I did not. 19 Q. Other than talking to Highland's counsel, did 20 you talk to anyone about Mr. Seery's deposition? 21 A. No.
Q. Have you been deposed before? A. No. Q. So I'm sure your counsel explained to you, but very quickly, you understand that you're testifying under oath and penalty of perjury as though you were in a court of law? A. Yes. Q. And you understand my job is to ask clear questions that you understand? A. Yes.	13 A. No. 14 Q. Did you see any synopsis or summary of his 15 deposition? 16 A. No. 17 Q. Did you talk to him about his deposition? 18 A. I did not. 19 Q. Other than talking to Highland's counsel, did 20 you talk to anyone about Mr. Seery's deposition? 21 A. No. 22 Q. Other than talking to Highland's counsel, did
Q. Have you been deposed before? A. No. Q. So I'm sure your counsel explained to you, but very quickly, you understand that you're testifying under oath and penalty of perjury as though you were in a court of law? A. Yes. Q. And you understand my job is to ask clear questions that you understand? A. Yes. Q. And if for whatever reason you don't	13 A. No. 14 Q. Did you see any synopsis or summary of his 15 deposition? 16 A. No. 17 Q. Did you talk to him about his deposition? 18 A. I did not. 19 Q. Other than talking to Highland's counsel, did 20 you talk to anyone about Mr. Seery's deposition? 21 A. No. 22 Q. Other than talking to Highland's counsel, did 23 you talk to anyone about your deposition today?
13 Q. Have you been deposed before? 14 A. No. 15 Q. So I'm sure your counsel explained to you, 16 but very quickly, you understand that you're testifying 17 under oath and penalty of perjury as though you were in 18 a court of law? 19 A. Yes. 20 Q. And you understand my job is to ask clear 21 questions that you understand? 22 A. Yes.	13 A. No. 14 Q. Did you see any synopsis or summary of his 15 deposition? 16 A. No. 17 Q. Did you talk to him about his deposition? 18 A. I did not. 19 Q. Other than talking to Highland's counsel, did 20 you talk to anyone about Mr. Seery's deposition? 21 A. No. 22 Q. Other than talking to Highland's counsel, did

12

Kristin Hendrix - October 27, 2021

- A. First time about this was last Friday. And
- 2 then again Monday this week. And yesterday. And this
- 3 morning.
- 4 Q. Friday was there any lawyer present during
- 5 your discussion with Mr. Klos?
 - A. Yes, every time Mr. Morris was present.
- MR. RUKAVINA: Is it your position that those
- 8 four discussions would be privileged, Counsel?
- q MR. MORRIS: Yes.
- 10 MR. RUKAVINA: Then we'll move on.
- 11 Q. (BY MR. RUKAVINA) So we've established the
- 12 four times you talked to Mr. Klos with counsel present.
- 13 Did you do anything else related to or in preparation
- 14 for today's deposition?
- 15 A. Yes, probably went through and reviewed some
- 16 emails, documentation that I may have had that I need
- 17 to refresh memory on.
- 18 Q. These documents and emails that you might
- 19 have reviewed, did you supplementally provide them to
- 20 counsel or anyone else?
- 21 A. Yes.
- 22 O. This would have been in the last week or
- 23 10 days?
- 24 A. Yes.

2 Highland?

7 documents?

11

12

14

13 please.

A. Not that I recall.

10 counsel was charged with?

A. Yes.

A. Yes.

25 Q. Prior to the last week or 10 days, are you

1 aware that my office served requests for production on

Q. And did you do anything prior to the last

Q. Is that something that you understand legal

Q. Let's go briefly now about your background,

5 week or 10 days to try to search both your personal

6 records and corporate records for any responsive

- 1 A. Yes.
- 2 Q. And has your CPA license been current since
- 3 then?
- 4 A. Sure has.
- 5 Q. Have you faced any kind of disciplinary
- 6 action as a CPA?
- A. I have not.
- Q. Now, please walk me through your work
- 9 history. Let's say starting with after you graduated
- 11 A. Sure. December of 2005, which was shortly --
- 12 sorry, 2004, shortly after I graduated from
- 13 North Texas, I started at Highland. It was my first
- 14 real job out of college. I have been there ever since,
- 15 almost 17 years now.
- 16 Have worked in the corporate accounting
- 17 department the entire time. Started off as the AP
- 18 associate, and worked my way up over the years and
- 19 currently am the controller.
- 20 Q. So even when you were getting your MBA and
- 21 CPA you were employed by Highland?
- 22 A. Yes.
- 23 Q. Impressive. You're the controller today you
- 24 mentioned?
- 25 A. Yes.

- Q. That's -- when did you become the controller, 1
 - sometime February or March of this year?
 - 3 A. Yes.
 - 4 Q. Before you became the controller, what was
 - 5 your role at Highland?
 - A. Right before that I was assistant controller.
 - That was I believe April of 2020. Before that, the
 - senior accounting manager, and I held that position for
 - 9 years.
 - 10 Q. So in May of 2019 would you have been the
 - 11 senior -- you said senior account?
 - 12 A. Senior accounting manager I believe was my
 - 13 title.
 - 14 Q. And would that have been your title in May of
 - 15 2017?
 - 16 A. Yes, I believe so.
 - Q. And let's focus now on May 2019 as the senior
 - 18 accounting manager. How would you describe your role
 - 19 at Highland in May of 2019? What were your duties?
 - 20 A. Sure. I helped with treasury management
 - 21 function, cash forecasts and things like that. And
 - 22 oversaw the financial reporting from the last batch of
 - 23 AP to all the way to financials and reporting on
 - 24 audits.
 - 25 Q. Who did you report to in May of 2019?

10

15 A. I live in Denton, Texas. 16 Q. And what is your date of birth, please? 17 A. January 26, 1982.

Q. And walk me through your educational

Where do you live?

19 background, starting with any postsecondary, if any, schooling or college or anything like that.

21 A. Sure. Graduated in 2004 from the University

- 22 of North Texas with a degree in finance. Went on to 23 get my MBA from SMU in 2009. And then went further and
- 24 got my CPA license I believe in 2015.
- Q. In the state of Texas?

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13

- 1 A. David Klos.
- 2 Q. What was Mr. Klos' title to your
- 3 understanding back then?
- 4 A. I believe he was the controller.
- 5 Q. And do you have an understanding as to who
- 6 Mr. Klos reported to back then?
- 7 A. Yes, Frank Waterhouse.
- Q. Frank Waterhouse. Who was he in May of 2019?
- 9 A. The CFO.
- 10 Q. Is Mr. Klos still with Highland today?
- 11 A. He is.
- 12 O. What is his role now?
- 13 A. He's now CFO.
- 14 Q. You mentioned treasury management as of 2019,
- $15\,$ May. What do you mean by treasury management? What is
- 16 that?
- 17 A. Generally speaking, we -- it's not just me as
- 18 one person. We have checks and balances.
- 19 My team would be in charge of sending out
- 20 payments, reconciling bank statements, making sure
- 21 money is in the right accounts, creating cash forecasts
- 22 and reporting on those every week with the CFO and
- 23 oftentimes the CEO.
- 24 Generally that's everything that fell under
- 25 the umbrella.

- 1 A. Yes, you can say the debtor.
 - 2 Q. So when I say the debtor and you say the
 - 3 debtor we understand each other to mean Highland
 - 4 Capital Management, comma, LP; correct?
 - 5 A. Correct.
 - 6 Q. I apologize. In the December 2020 period, I
 - 7 would imagine that the debtor had its own -- that
 - 8 was -- strike that.
 - 9 We'll cut to the chase.
 - In December of 2020, the debtor was providing
 - 11 services to various other entities affiliated with
 - 12 Mr. Dondero; correct?
 - 13 A. Correct.
 - 14 Q. That would have included NexPoint Advisors,
 - 15 LP?

10

- 16 A. Correct.
- 17 Q. And you're aware that NexPoint Advisors was
- 18 the obligor on at least one promissory note to the
- 19 debtor; correct?
- 20 A. Correct.
- 21 Q. And did the debtor in December 2020 provide
- 22 so-called treasury management services to NexPoint
- 23 Advisors?
- 24 MR. MORRIS: Objection to the form of the
- 25 question.

14 | 16

- 1 Q. And would your description of treasury
- 2 management be the same for the December 2020 period?
- 3 A. Yes.
- 4 Q. Who at Highland or which group at Highland in
- 5 December of 2020 would have been responsible for noting
- 6 that there are certain bills that need to be paid in
- 7 the near or subsequent future.
- 8 By way of, let's say, accounts payable or
- 9 promissory notes or taxes or anything like that?
- 10 A. Can you repeat your question.
- 11 Q. Sure. So obviously, Highland was a pretty
- 12 sophisticated business; correct?
- 13 A. Yeah.
- 14 MR. MORRIS: Objection to the form.
- 15 Q. (BY MR. RUKAVINA) And had various accounts
- 16 payable; right?
- 17 A. Yes
- 18 Q. And it had maybe, let's just say, certain
- 19 note obligations that it had to pay from time to time;
- 20 correct?
- 21 MR. MORRIS: Objection to the form of the
- 22 question. Do you mean Highland Capital?
- 23 MR. RUKAVINA: I mean Highland Capital
- 24 Management; correct, I'm sorry. The debtor.
- Q. (BY MR. RUKAVINA) Can we say the debtor?

- 1 THE WITNESS: Yes.
- 2 Q. (BY MR. RUKAVINA) As part of that, in
- 3 December 2020, would it have been employees of the
- 4 debtor that would have scheduled for potential payment,
- 5 subject to approval by NexPoint, NexPoint's future
- 6 obligations as they were coming due?
- 7 A. Yes, we would have scheduled, only with
- 8 approval.
- 9 Q. And would that have included NexPoint's
- 10 obligations on the promissory note to Highland?
- 11 A. Yes.
- 12 Q. Back to your background briefly.
 - Do you have any legal training at all?
- 14 A. I do not
- 15 Q. Do you have any courses, have you taken any
- 16 courses in drafting promissory notes?
- 17 A. No.
- 18 Q. Do you believe that your expertise as a
- 19 certified public accountant gives you any greater
- 20 qualification than anyone else to prepare a promissory
- 21 note?

13

- MR. MORRIS: Objection to the form of the
- 23 question.
- 24 THE WITNESS: No.
- 25 Q. (BY MR. RUKAVINA) Have you ever prepared or

Kristin Hendrix - October 27, 2021 17 19 1 drafted a promissory note? 1 Q. By updating, what do you mean? A. That term is probably used loosely. I have A. There's a few things that would need 3 not completely drafted a promissory note from scratch, updating, the date. Q. Maker? 4 no. 5 Q. And we'll go into the details. Fair to say A. Maker. 6 that you have taken a form promissory note and revised Q. Amount? 7 it? A. The dollar amount, the interest rate. 8 Q. And is it your testimony that the corporate A. Absolutely. 9 Q. Was this part of your job in May of 2019 at accounting group would do these things on its own 10 Highland? without necessarily the involvement of the legal group? 11 11 MR. MORRIS: Objection to the form of the A. Yes. 12 question. 12 Q. Going back to the May 2019 time frame, were 13 13 you part of a particular group at Highland, like THE WITNESS: Generally, yes. 14 accounting or legal or compliance? 14 Q. (BY MR. RUKAVINA) Do you have any memory in 15 A. Yes, corporate accounting. 15 or before May of 2019 if the corporate -- I'm sorry, if 16 Q. Corporate accounting. That's what you 16 the legal group became involved in drafting or 17 described before about treasury management and 17 executing any prior intercompany promissory notes? 18 projections and forecasts? 18 A. Yes. 19 A. Yes. 19 Q. Explain to me what you remember about that. 20 Q. In May of 2019, was it the practice at 20 A. I do know that they were involved with 21 Highland that corporate accounting would be responsible 21 drafting restructured notes. So taking demand notes and turning them into a 30-year amort note. 22 for drafting intercompany promissory notes? 23 23 A. Not necessarily drafting, but updating a That was in 2017. I know for sure that they 24 draft that had been previously produced and provided by 24 were involved in that because it was something 25 our legal team, yes. 25 different. We weren't just updating a demand note. 18 Q. Is it your testimony that to the best of your 1 Q. And Highland in May -- the debtor in May of 2 2019 did have a legal department? recollection by May of 2019 and in May of 2019 it would 3 A. Yes. 3 have been the corporate accounting group that would 4 Q. Kind of like the corporate accounting, there 4 have handled routine intercompany demand notes?

20

5 was a separate legal department; correct?

A. Correct.

Q. And who would have been in charge of that 8 department in May of 2019?

A. Scott Ellington, E-l-l-i-n-g-t-o-n.

10 Q. In May of 2019 or by May of 2019 was there

11 any practice at Highland as to whether its legal

12 department would be involved with the drafting or

execution of any intercompany promissory notes?

14 **MR. MORRIS:** Objection to the form of the 15 question.

16 THE WITNESS: It depends on the note.

Q. (BY MR. RUKAVINA) What did it depend on? 17

18 A. Our typical practice is if we have a loan

with certain affiliates that it's a demand note. We

have a template that we have used for years that was

21 created by either our internal legal team or an outside

22 law firm, I'm not sure which.

23 The typical practice is always updating a few

24 things on that template, getting it executed, and

25 filing it in our audit folders.

Q. And you can think of more than one instance

7 on which that happened?

Q. And this is not a memory test, but going back

10 in time can you try to give an estimate of what year

11 that first started happening, that the corporate

12 accounting would handle the drafting or execution of

13 intercompany demand notes?

A. As far as I can remember.

15 Q. Is it your testimony that as -- maybe even

16 going back as far as 2005 there were intercompany

17 demand notes?

18 A. Yes.

14

19 Q. I don't know how to ask this question, but

20 was this a significant thing in corporate accounting or

21 just another routine deal when you handled demand

22 notes?

23 MR. MORRIS: Objection to the form of the

24 question.

25 THE WITNESS: This is a routine job duty that

6 (Pages 21 to 24)

23

24

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21

- 1 we routinely did.
- 2 Q. (BY MR. RUKAVINA) Between 2005 and 2019, do
- 3 you remember any maker on these intercompany demand
- 4 notes actually being required to pay a demand note, in
- 5 other words, Highland making demand?
- A. Not that I can specifically recall.
- 7 Q. Do you have any recollection as to what
- 8 happened to these intercompany demand notes over the
- 9 years between 2005 and 2019?
- 10 A. Yeah. Typically anytime specifically Jim
- 11 Dondero would need to move money between related
- 12 parties, he would pay down -- when I say him, he would
- 13 have us in corporate accounting move money around, pay
- 14 off notes, reissue new notes somewhere else.
- 15 So a way to move money around between his 16 entities.
- 17 Q. So let's use just hypotheticals here so that
- 18 I'm not trying to pin you down to any specific fact.
- 19 But between 2005 and 2019, is it fair to say
- 20 that if some Dondero entity that's not the debtor
- 21 needed money and the debtor had money, then Dondero
- 22 would have the debtor lend money to that entity on a
- 23 demand note basis?
- A. So long as they have the cash available to do
- 25 so.

- 1 A. If the debtor needed cash to lend to another
 - 2 entity.
 - 3 Q. I see. So again, it's all one big happy
 - 4 family, and whoever needed cash, the cash moved around;
 - 5 correct?
 - 6 A. Correct.
 - Q. Was it Mr. Dondero that basically was the
 - 8 only deciding person in each instance that you're aware
 - 9 of in those 14 years as to when a note would be made or
 - 10 repaid?
 - 11 A. I can't answer specifically to that. Most of
 - 12 my direction came from our CFO at the time,
 - 13 Frank Waterhouse. So what conversations he would have
 - 14 with Jim Dondero, I can't answer to that. But I would
 - 15 suspect so, yes.
 - 16 Q. And in May of 2019 or by May of 2019, did you
 - 17 communicate personally, by email or telephone, in
 - 18 person, periodically with Jim Dondero?
 - A. I can't say periodically, no.
 - 20 Q. Well, I'm not trying to put words in your
 - 21 mouth. Is it fair to say that you kind of -- your
 - 22 communications stopped with Mr. Waterhouse and
 - 23 Waterhouse communicated with Dondero, as opposed to you
 - 24 regularly communicating with Dondero?
 - 25 A. That's typical, yes.

22

- 1 Q. "They" being the debtor?
- 2 A. Debtor, yes.
- 3 Q. And is it fair to say, then, again
- 4 hypothetically without any specifics, that if the
- 5 debtor maybe from time to time needed money and one of
- 6 these other entities had cash, then Dondero would cause
- 7 that other entity to pay down the demand note?
- 8 **MR. MORRIS:** Objection to the form of the
- 9 question.
- 10 THE WITNESS: Can you repeat that.
- 11 Q. (BY MR. RUKAVINA) Sure. So I think you
- 12 mentioned that from time to time these entities would
- 13 pay down these demand notes?
- 14 A. To the debtor?
- 15 Q. To the debtor.
- 16 A. Yes.
- 17 Q. And is that, hypothetically again, is that
- 18 because on occasion the debtor might have needed cash
- 19 and these entities had the cash, so Dondero would have
- 20 them pay back the note?
- 21 MR. MORRIS: Objection to the form of the
- 22 question.
- THE WITNESS: Yes, that could be a reason.
- 24 Q. (BY MR. RUKAVINA) Can you think of any other
- 25 reason in those 14 years?

- 1 Q. Can you think of any instances in which
- 2 Mr. Dondero gave you any instructions or you came to
- 3 him seeking any instructions, without some intermediary
- 4 between the two of you?
- 5 A. No, usually Frank was present.
- Q. Would you categorize Mr. Waterhouse as kind
- 7 of guarding with jealousy his access to Mr. Dondero?
- 8 MR. MORRIS: Objection to the form of the
- 9 question.
- 10 THE WITNESS: No.
- 11 Q. (BY MR. RUKAVINA) What kind of boss was he
- 12 in May of 2019? Was he laid back, or was he a jerk?
- 13 Was he demanding? How would you characterize him in
- 14 May of 2019?
- 15 MR. MORRIS: Objection to the form of the
- 16 question.
- 17 THE WITNESS: I would say he was a good boss.
- 18 Q. (BY MR. RUKAVINA) You think he was competent
- 19 as far as his job went?
- 20 A. Yes, very competent.
- 21 Q. Do you think he was competent as far as his
- 22 job went in December of 2020?
- 23 A. Yes.
- 24 Q. January 2021?
- 25 A. Yes.

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25

- 1 Q. Was he patient and understanding as a boss?
- 2 A. Yes.
- 3 Q. Okay. Was he ever condescending or rude to
- 4 anyone in your presence?
- 5 A. No.
- 6 Q. So you're the controller today at Highland,
- 7 the debtor, the reorganized debtor; right?
- 8 A. Ves
- 9 Q. And who do you report to? You mentioned
- 10 Mr. Klos is the CFO?
- 11 A. Yes.
- 12 Q. And do you also report to Mr. Seery?
- 13 A. Yes, I think everybody does.
- 14 Q. And I don't need to know details, but I take
- 15 it you're on a salary from reorganized Highland?
- 16 A. Yes.
- 17 Q. Is any part of your compensation merit or
- 18 bonus based?
- 19 A. It could potentially be.
- 20 Q. Have you had any discussions with Mr. Seery
- 21 or Mr. Klos about some sort of bonus compensation?
- 22 A. Yes.
- Q. Has anything been agreed to?
- 24 A. Yes.
- 25 Q. And again, I don't need to know the exact

- 1 A. Correct.
- 2 Q. And how Highland, reorganized Highland
- 3 collects these promissory notes is going to play no
- 4 part in your base and bonus compensation to your
- 5 understanding; is that correct?
- A. To my knowledge, yes.
- 7 Q. So you have no direct or indirect stake in
- 8 the outcome of these litigations?
- 9 A. No
- 10 Q. And you understand that I represent HCMFA and
- 11 NexPoint?
- 12 A. Yes.
- 13 Q. And these court reporters are not familiar
- 14 with some of our terminology. NAP [verbatim], if we
- 15 say that, that means NexPoint; right?
- 16 A. Uh-huh.
- 17 Q. You have to say yes or no.
- 18 A. Yes, NPA, NexPoint.
 - Q. NPA. And when we say NexPoint, you and I are
- 20 meaning NexPoint Advisors, LP; right?
- 21 A. Yes.

19

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- Q. And when we say HCMFA, we're meaning Highland
- 23 Capital Management Fund Advisors, LP, yes?
- 24 A. Yes.
- 25 Q. What is your understanding of the two

- 1 numbers. What would your bonus compensation consist
- 2 of? How would it be decided?
- 3 A. It's actually -- was decided when I agreed to
- 4 stay on the Highland team back in February 2021, so
- 5 it's in my employment agreement.
- 6 Q. So what's your bonus compensation?
- 7 A. I'm not sure I understand what you're asking.
- 8 Q. So is the bonus discretionary on the part of
- 9 Highland?
- 10 A. No, it's a set amount.
- 11 Q. And what triggers it or governs the set
- 12 amount?
- 13 A. Just it gets paid out on a certain date of
- 14 the year. It's very straightforward, set out in my
- 15 employment agreement.
- 16 Q. Is it irrespective of the performance of the
- 17 reorganized debtor?
- 18 A. Yes.
- 19 Q. So why do you call it a bonus instead of base
- 20 compensation?
- 21 A. That's what it's called in my agreement.
- Q. So your base compensation and your bonus,
- 23 it's your testimony, you're going to earn it
- 24 irrespective of whether reorganized Highland does good
- 25 or bad with respect to its profitability?

- 1 lawsuits, the one against HCMFA and the one against
- 2 NexPoint, that you're being deposed on today?
- 3 MR. MORRIS: Objection to the form of the
- 4 question.
- 5 Q. (BY MR. RUKAVINA) Who is suing who and for
- 6 what?
- 7 A. I don't know all the details.
- 8 Q. So we've established that you've discussed
- 9 these lawsuits in the last week or a little bit more
- 10 with legal counsel. I don't want to talk about that.
- 11 Prior to these recent discussions, did you
- 12 have any discussions with anyone at Highland about its
- 13 lawsuits against HCMFA and NexPoint on promissory
- 14 notes?
- 15 A. Repeat that again.
- 16 Q. Sure. So remember we're excluding the recent
- 17 discussions in the last week or 10 days with counsel;
- 18 right?
- 19 A. Okay.
- Q. Are you aware that in January of 2021 the
- 21 debtor sued NexPoint to collect on a promissory note?
- 22 A. I'm aware that demand notices were sent.
- O. So until recently you weren't aware that a
- 24 lawsuit had been filed?
- 25 A. There's a lot of lawsuits filed. I can't

Kristin Hendrix - October 27, 2021 31 1 keep track of what is what or what we're talking about 1 about either or both of these two promissory notes? 2 at certain times. A. Sure, ves. Q. But you have no distinct memory of that? 3 Q. What do you remember? 3 4 A. Correct. A. I remember seeing them because I've recently 5 Q. And same question for the lawsuit that the 5 looked at them. I see them all the time in our loan 6 debtor filed against HCMFA in January. 6 tracking spreadsheets. My team would have been Do you have any specific memory of that responsible for the whole process that I explained 8 lawsuit having been filed? before when it comes to a promissory note. A. Not specifically. Q. And --10 Q. You mentioned that you're aware that on or 10 MR. MORRIS: Are you finished? 11 before January 2021, demand letters had been sent? 11 THE WITNESS: Yes. 12 Q. (BY MR. RUKAVINA) And we have an email here Q. Did you play any role in either drafting 13 13 that might give some more context to that if I can find 14 those demand letters or the decision to send them? 15 A. No. 15 This will be Exhibit 3. This is an email O. So going back to my question about these 16 16 from David Klos to corporate accounting dated May 2, 17 lawsuits, do you have any memory of anyone asking 17 18 you -- again, excluding the last week or two. 18 (Whereupon, Exhibit 3 was marked for 19 Do you have any memory of anyone asking you 19 identification.) 20 to do anything with respect to either or both of these 20 Q. (BY MR. RUKAVINA) Do you see this email, 21 lawsuits? 21 ma'am? 22 A. No. 22 A. Yes. 23 Q. You have no memory of Mr. Waterhouse, 23 Q. Okay. Corporate accounting, would that email 24 Mr. Klos, Mr. Surgent, or Mr. Seery asking for any group have included you? 25 background information or your input at all on these A. Yes. 30 1 two lawsuits? 1 Q. And this email says, Kristin, can you or MR. MORRIS: Better not have been --2 2 Hayley. Do you think that Kristin was you? 3 3

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- THE WITNESS: No.
- 4 Q. (BY MR. RUKAVINA) Who did I say? Did I 5 misspeak? Okay.
- 6 Now we're going to have some exhibits here.
- 7 And do you have the labels?
- 8 Let's take a minute break off the record.
- (Off the record.)
- 10 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to
- 11 provide to you a promissory note in the original
- 12 principal amount of \$5 million from HCMFA. This is the
- 13 PDF version of this as filed with the Court for
- 14 collection. It's going to be Exhibit 1.
- 15 (Whereupon, Exhibit 1 was marked for
- 16 identification.)
- 17 Q. (BY MR. RUKAVINA) Before you look at
- 18 Exhibit 1, I'm going to do the same thing for
- Exhibit 2, which is a promissory note from HCMFA for 19
- 20 \$2.4 million, dated May 2, 2019.
- (Whereupon, Exhibit 2 was marked for 21
- 22 identification.)
- O. (BY MR. RUKAVINA) Again, Ms. Hendrix, these 23
- 24 are the PDF versions of these notes as filed with the
- 25 Court. Sitting here today, do you remember anything

- A. I do.
- 4 Q. Do you remember receiving this email?
- 5 A. Not explicitly.
- Q. So it says Blair. Who would Blair be?
- 7 A. Blair was our AP associate.
- 8 Q. What is her last name?
- A. At this time it would have been Roeber,
- 10 R-o-e-b-e-r.
- 11 Q. Okay. And did it subsequently change?
- 12 A. Yes, it's now Hillis, H-i-l-i-s.
- 13 Q. Please send \$2.4 million from HCMLP to HCMFA.
- 14 This is a new interco loan. Kristin, can you or Hayley
- please prep a note for execution. I'll have further
- 16 instructions later today, but please process this
- 17 payment as soon as possible.
- 18 Did I read that correctly?
- 19
- Q. Do you have any memory of whether this email 20
- 21 relates to Exhibit 2, the \$2.4 million promissory note?
- 22 A. It seems like it does, same date, same
- 23 amount.
- 24 Q. Do you have any memory, or in reviewing your
- 25 files did you see any similar email or document that

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1 would have related to Exhibit 1, the \$5 million promissory note?

3 A. Yes. I believe there's another email for 4

- 5 Q. And do you believe that you provided that to 6 counsel?
- 7 A. Yes.
- 8 Q. Recently or some time ago?
- A. Well, I don't think I provided it, so I'm not
- 10 sure when they got it. I know it has been provided.
- 11 Q. You know that it has?
- 12 A. Uh-huh.
- 13 Q. How do you know?
- 14 A. Because I've seen it.
- 15 Q. In the production that was produced to me?
- 16 A. Yes.
- 17 Q. And also from a David Klos?
- 18 A. This one, or on the -- when I say this one,
- 19 on the \$2.4 million or the 5-?
- 20 Q. On the \$5 million note.
- 21 A. I'm not sure.
- 22 Q. Okay. Let me make sure I understand you
- 23 correctly.
- 24 Sitting here today you believe that there is
- 25 another email referencing the \$5 million loan that has

1 the door, is typically how this works.

- Q. Is the answer generally the same for the
- 3 \$5 million note?
- A. Yes.
- Q. So is it fair to say that typically,
- 6 obviously not every time, but typically your corporate
- accounting group when it would see intercompany
- 8 transfers in large amounts would believe that they were

10 MR. MORRIS: Objection to the form of the

- 11 question.
- 12 THE WITNESS: Typically they were loans.
- 13 There's not really another way to get money from one
- 14 entity to another. And if they were papered as a loan,
- 15 that means we were told to set it up that way.
- Q. (BY MR. RUKAVINA) What do you mean papered
- 17 as a loan? Aren't you papering it as a loan when
- someone makes the promissory note?
- 19 A. Yes, because we're told by somebody to do
- 20 that.
- 21 Q. And in this instance, Mr. Klos on Exhibit 3
- 22 told the group that this was a loan; right?
- 23 A. Correct. But he would have spoken with
- 24 Frank Waterhouse or Jim Dondero prior to that, before
- 25 telling anybody to do that.

- 1 been produced to my office?
- A. Yes. I believe so.
- 3 Q. Okay. And going off memory, did it kind of
- 4 say the same thing as this Exhibit 3 except that it
- 5 referenced \$5 million?
- 6 MR. MORRIS: Objection to the form of the
- 7 question.
- 8 THE WITNESS: Generally, should have said the
- 9 similar situation, yeah.
- 10 Q. (BY MR. RUKAVINA) So Mr. Klos says, this is
- 11 a new interco loan, for Exhibit 3. Other than what he
- 12 told you, that this is an intercompany loan, did anyone
- 13 else tell you or did you have any other information on
- 14 May 2, 2019 that this was a loan?
- 15 A. I don't specifically recall these
- 16 conversations, but I can tell you our normal practice
- 17 would be we would either likely be in a cash meeting --
- 18 and I say "we." Would have been myself, Dave Klos,
- 19 Frank Waterhouse, potentially even Jim Dondero.
- 20 But I don't recall conversations on this
- 21 specific date. But general practice is we would talk
- 22 about it.
- 23 Oftentimes, Frank would either call Dave or I
- 24 or stop by and tell us that, we need to send money to
- 25 an affiliate, paper up a new loan, let's get a wire out

- Q. Okay. And do you have any knowledge that he
- 2 did speak to Mr. Waterhouse or Mr. Dondero before
- sending this email?
- A. Again, I don't have specific knowledge on the
- 5 exact conversations, but that's always how it has
- 7 Q. That's how it was for 14 or 15 years;
- 8 correct?
- A. Yes.
- Q. But you're logically assuming that it
- 11 happened here. You don't know that it happened here;
- 12 correct?
- MR. MORRIS: Objection to the form of the 13
- 14 question.
- THE WITNESS: I would have to be fairly 15
- 16 certain that it did, even though I can't recall
- specific conversations.
- 18 Q. (BY MR. RUKAVINA) Did you ask Mr. Klos about
- 19 who told him that this is a new intercompany loan on
- 20 Exhibit 3?
- 21 A. No. It's quite possible I was involved in
- 22 the conversation. I reported to him. I wouldn't
- question his authority.
- 24 Q. Did you ask Mr. Klos who told him that the
- 25 \$5 million deal was also an intercompany loan?

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- 1 A. I did not ask that specific question that I 2 can recall.
- Q. Did you ask Mr. Waterhouse whether either ofthese transactions were loans?
- 5 A. I'm sure Mr. Waterhouse is the one that told
- 6 us they were loans. We wouldn't just paper up a loan,
- 7 send money out and call it a loan and account for it
- 8 that way, unless somebody specifically told us.
- Q. Do you have any memory of Mr. Waterhouse
- 10 orally or in writing or email or in any way, shape, or
- 11 form on or about May 2 or 3, 2019 telling you that the
- 12 2.4 million or \$5 million transfers were intercompany
- 13 loans?
- 14 A. No specific knowledge of exact conversations,
- 15 but I'm certain that those conversations were had
- 16 because that's the only way that we would have papered
- 17 up a loan, sent money out as a loan, had them on our
- 18 financials for two years.
- 19 Q. So you're saying that this email, Exhibit 3,
- 20 $\,$ from Mr. Klos was not enough, that there would have
- 21 been other things that happened to make you and other
- 22 people in your group confident that these were loans?
- 23 A. Yes.
- Q. And these other things would have been in
- 25 person or by email?

- 1 a consent fee that the advisor of the Global Allocation
- 2 Fund had promised to pay to shareholders of that fund,
- 3 and it was in the amount of \$5 million roughly.
- 4 So both of these loans were for those
- 5 purposes respectfully.
- Q. And were you in May of 2019 also aware that
- 7 in addition to the \$2.4 million, there was another more
- $8 \hspace{0.1cm}$ than \$5 million paid to that fund by HCMFA's insurer as
- 9 compensation for the NAV error?
 - A. By the insurance company, yes.
- 11 Q. So the \$7.4 million, you understood then was
- 12 a loan as opposed to compensation to HCMFA?
- 13 A. Yes.

10

- 14 Q. Okay. Did you understand in May of 2019 that
- 15 it had been the debtor and its valuation team that
- 16 caused that NAV error?
 - MR. MORRIS: Objection to the form of the
- 18 question.
 - THE WITNESS: I can't answer that. I was not
- 20 involved with the activities leading up to the NAV
- 21 error.

19

- Q. (BY MR. RUKAVINA) How do you know that the
- 23 \$7.4 million were being transferred for the NAV error
- 24 and consent fee?
- 25 A. Because I do know about both of those

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- 1 A. Most likely in person via phone call.
- Q. Okay. So again, you have no specific memory
- 3 of it, but based on the 14-year pattern and conduct you
- 4 believe that you would have discussed these two
- 5 transfers with Mr. Waterhouse and he would have told
- 6 you these are loans?
- 7 MR. MORRIS: Objection to the form of the
- 8 question.
- 9 THE WITNESS: Correct.
- 10 Q. (BY MR. RUKAVINA) And then would he have
- 11 told you to take care of the promissory notes, or was
- 12 that Mr. Klos here in Exhibit 3?
- 13 A. It could have been both. It's clearly Dave
- 14 in this email, but Frank could have also said that to
- 15 me.
- 16 Q. Now, do you -- strike that.
- 17 In May of 2019, did you know or were you told
- 18 why these \$7.4 million were being transferred from the
- 19 debtor to HCMFA?
- 20 A. Yes. I do have recollection that -- I do
- 21 know that there were two big events in May 2019.
- 22 2.4 million was related to a TerreStar NAV error, with
- 23 one of the funds advised by HCMFA. That's Global
- 24 Allocation Fund.
- 25 Similar with the \$5 million loan. There was

- 1 instances and I do know that HCMFA needed to pay these
- 2 dollar amounts for both of those.
- 3 Q. And you knew that in May of 2019?
- 4 A. Yes.
- 5 Q. How did you know that in May of 2019?
- 6 A. It was lots of discussions had been going on
- 7 around both of these issues for months. These weren't
- 8 surprises to anybody.
- 9 Q. So although you weren't involved directly
- 10 with the NAV error issues, it was more or less common
- 11 knowledge in your accounting group?
- 12 A. Correct.
- 13 Q. Do you have any knowledge at all as to
- 14 whether Mr. Dondero decided to transfer these
- 15 \$7.4 million not as a loan, but to compensate HCMFA for
- 16 the debtor's alleged liability?
- 17 A. Have not heard of that.
- 18 Q. Ever?
- 19 A. Never.
- 20 Q. But you also never heard Mr. Dondero say that
- 21 these \$7.4 million were a loan; correct?
- 22 A. That was not told to me directly.
- Q. Again, you're logically assuming that based
- 24 on many instances of intercompany transfers in the
- 25 14 years prior to that?

11 (Pages 41 to 44)

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43 41 1 MR. MORRIS: Objection to the form of the 1 answers don't count and I'm in trouble. 2 question. Mischaracterizes the testimony. 6 will be the \$5 million note, and 7 will be 3 THE WITNESS: Correct. 3 the \$2.4 million note. 4 Q. (BY MR. RUKAVINA) I think you answered 4 (Whereupon, Exhibits 6 & 7 were marked for 5 correct? 5 identification.) 6 A. Correct. 6 Q. (BY MR. RUKAVINA) Okay. So Exhibit 4 and 5 Q. And you mentioned that after these notes, you 7 are the Word documents. Do you have any memory of you 8 saw them on internal financials and that reinforces doing anything with respect to these two Word your view that these were loans? documents? 10 10 A. Correct. A. I don't have specific memory, but generally Q. But as of May 2 and 3, 2019, no one had told 11 11 speaking, it was my job to update promissory note 12 you directly that these are loans? 12 templates and create promissory notes. 13 MR. MORRIS: Objection to the form of the 13 Q. So do you believe that -- we discussed 14 question. It's in writing. 14 earlier that your group would have used a template and 15 THE WITNESS: That's not what I'm saying at 15 that it would have made changes reflecting the maker, 16 all. 16 amount, date, interest rate. 17 Q. (BY MR. RUKAVINA) Other than Mr. Klos' email Do you believe you were the one with respect 17 18 or emails, no one told you on May 2 or May 3, 2019 that 18 to 4 and 5 that updated that template to create 4 you remember today that these were loans? 19 and 5? 20 A. It quite possibly could have been told to me 20 A. I'm sure that I was, yes. 21 in addition to this email. 21 Q. Well, Exhibit 6 -- do you know what metadata 22 Q. I understand. You just have no memory of 22 is? 23 that today; correct? 23 A. Sort of. 24 A. Correct. 24 Q. What's your understanding of what metadata 25 Q. Is there anything that you can think of 25 is? 42 44 A. Just in context from speaking on it recently, 1 sitting here today to refresh your memory on that 1 2 point? it's going to tell you who made changes to the A. I do not think so. I'm sure there was documents, is what I would assume. 4 conversation that unfortunately would not be in an 4 MR. RUKAVINA: Go off the record for one 5 5 second. 6 Q. Now, we have the Word documents, the Word (Off the record.) 6 7 Q. (BY MR. RUKAVINA) So a little bit of error 7 version of these two promissory notes, and you're going to have rely on me that I printed these out as on my part. We'll have some more metadata, but we can Mr. Morris sent to me. If I'm misleading you on that, still talk about 6 and 7. 10 then I'm in trouble and your answers don't count. 10 It says the author JFORSHEE, J-F-O-R-S-H-E-E. 11 11 Do you recall or do you know who that person was? So please assume that I didn't doctor these 12 A. I recognize the name, and it makes sense. 12 and that I printed them out as they were prepared to 13 me; okay? 13 This says Strasburger is the company. I think he was 14 A. Yes. 14 one of the lawyers that we had used at some point in 15 O. So Exhibit 4 will be the \$5 million note and 15 time. 16 Exhibit 5 will be the 2.4 million. 16 Q. Strasburger is a law firm? **17** (Whereupon, Exhibits 4 & 5 were marked for **17** A. Yes. 18 identification.) 18 Q. And then it says, so Exhibit 6 created May 3, 19 Q. (BY MR. RUKAVINA) Before I ask about 4 and 19 Exhibit 7 created May 2, modified, accessed. Does that 20 5, to be fair to you and refresh your memory, I'm going to the best of your understanding comport with when 21 to provide you printouts of the metadata, metadata --21 Exhibits 4 and 5 were actually created? 22 I'm not sure how to better say that -- for both notes. 22 A. Can you repeat that. 23 O. Yeah. We'll wait for the rest of the And again I'm representing to you that I 23

25

In and by May 2019 I think you mentioned that

800.445.9548

24 metadata. But let's go back to 4 and 5.

24 printed out the metadata without doctoring it, so25 please assume that's true, and if it's not, your

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- 1 it was your job to, I think you said update promissory 2 notes?
- 3 MR. MORRIS: Objection to the form of the
- 4 question.
 Q. (BY MR. RUKAVINA) Let me take that question
- 6 back.7 You testified earlier that your group would
- $8\,\,$ have taken a template and used it to create or prepare
- 9 a new promissory note; right?
- 10 A. Right.
- 11 Q. How would you call that process? What word
- 12 would you use for that process?
- 13 A. Let's call it papering the loan.
- 14 Q. In May of 2019, was it your job to paper the
- 15 loan?
- 16 A. Yes
- 17 Q. Would anyone else at the corporate accounting
- 18 group have been responsible to paper a loan?
- 19 A. At that time, I don't think so. I think I
- 20 was the one doing it.
- Q. I think you mentioned that you think you
- 22 papered the loan, respecting Exhibits 4 and 5; correct?
- 23 A. Correct.
- Q. You have no distinct present memory of
- 25 papering 4 and 5; correct?

- 1 that Mr. Waterhouse's signature there appears on the
- 2 Word document as an image.
- 3 A. Uh-huh.
- 4 Q. Do you have any memory of whether there was
- 5 an image that someone would have affixed of
- 6 Mr. Waterhouse's signature to promissory notes?
- A. Yes. We typically always -- he was
- 8 completely fine with having documentations -- sorry,
- 9 having documents signed or executed with his
- 10 e-signature.
- 11 Q. Would these pictures of his signature have
- 12 been his e-signature in May of 2019?
- 13 A. Yes.
- 14 Q. So let's just clarify that because I don't
- 15 want there to be any confusion.
- 16 I know there's some computer programs out
- 17 there that are restrictive and have passwords before
- 18 any signature is printed. And then there's some people
- 19 that use a stamp or an image; right?
- 20 MR. MORRIS: Objection to the form of the
- 21 question.
- Q. (BY MR. RUKAVINA) Are you following me?
- 23 A. I follow you.
- Q. In May of 2019, did Mr. Waterhouse have any
- 25 specific program that would have to -- you would have

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- 1 A. Correct.
- 2 Q. Can you think of anyone else at the corporate
- 3 accounting group that would have papered 4 and 5?
- 4 MR. MORRIS: Objection to the form of the 5 question.
- 6 THE WITNESS: The only other person that
- 7 could have would either be Dave Klos or Hayley Eliason.
- 8 Q. (BY MR. RUKAVINA) What was Hayley's role in
- 9 May of 2019?
- 10 A. She was the accountant. I can't recall her
- 11 specific title.
- 12 Q. Now, in May of 2019 when you papered a loan,
- 13 would you have consulted with either internal or
- 14 external legal before finishing that loan or presenting
- 15 it for signature or anything else?
- 16 A. Not if it was just our standard demand note
- 17 that we already had a template on.
- 18 Q. So would it have been your general course in
- 19 May of 2019, if you prepared Exhibits 4 and 5, not to
- $20\quad seek\ advice\ from\ internal\ or\ legal\ before\ proceeding$
- 21 with these notes?
- 22 A. With these two specific notes?
- 23 O. Yes.
- 24 A. Yes.
- 25 Q. If we flip the page, I'll represent to you

- 1 to go through before it would spit out his e-signature,
- 2 or was he fine with you and his staff using an image
- 3 like this?
 - A. He was fine with using his e-signature, and
- 5 what is on these documents was that exact e-signature.
- 6 So I don't know if he had -- I don't know how it was
- 7 created originally.
- 8 Q. The e-signature?
- 9 A. E-signature.
- 10 Q. Do you have any memory with respect to
- 11 Exhibits 4 and 5 of getting Mr. Waterhouse's specific
- 12 approval to use his e-signature?
- 3 A. I don't have exact specific memory, same as
- 14 conversations on these loans. But he would have had to
- 15 approve this loan in the dollar amount, the day.
- 16 He would have been the one directing us to
- 17 create these loans. In past practice he has always
- 18 approved using his e-signature to execute documents.
- 19 Q. How would he have approved Exhibits 4 and 5?
- 20 By that, I mean by email or memorandum? How would he
- 21 have approved it in May of 2019?
- MR. MORRIS: Objection to the form of the
- 23 question.
- 24 THE WITNESS: I would assume that, as I've
- 25 stated previously, these directions were coming

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- 1 directly from him to paper a loan. These changes that
- $2\,\,$ are made are only to the dollar amount. Interest rate
- 3 is pulled right off the IRS website.
- 4 That is his approval to paper a loan and in
- 5 fact execute or approve the loan.
- Q. (BY MR. RUKAVINA) In May of 2019, would
- 7 Mr. Waterhouse -- what was his practice as far as using
- 8 an ink signature on documents as opposed to an
- 9 e-signature? Did he have a practice?
- MR. MORRIS: Objection to the form of thequestion.
- 12 THE WITNESS: He has never specifically said,
- 13 on certain documents I would like to ink it with my
- 14 signature. Probably at this time, 99 percent of the
- 15 stuff my team got his signature on was his e-signature.
- 16 I think it just depended on the group and what it was.
- Q. (BY MR. RUKAVINA) So how would he authorize
- 18 you or your team to use his e-signature for any given
- 9 document in May of 2019?
- MR. MORRIS: Objection to the form of the
- 21 question.
- 22 THE WITNESS: Through the conversations that
- 23 would have been had before these emails went out saying
- 24 paper loan.
- Q. (BY MR. RUKAVINA) And -- okay. So, and

- 1 Q. But you have no memory of that authority or
 - 2 approval, specifically for 4 and 5?
 - 3 MR. MORRIS: Objection. Asked and answered
 - 4 about five times.
 - 5 THE WITNESS: Same as my answer I just gave.
 - 6 Q. (BY MR. RUKAVINA) And I think you mentioned
 - 7 that in your years at Highland your team papered
 - 8 hundreds of loans?
 - A. Yeah.
 - 10 Q. In your time at Highland, is it your
 - 11 testimony that the accounting -- corporate accounting
 - 12 department never made a mistake with respect to
 - 13 anything that it did?
 - 14 MR. MORRIS: Objection to the form of the
 - 15 question.
 - 16 THE WITNESS: No, I did not say that.
 - 17 Q. (BY MR. RUKAVINA) Do you recall any mistakes
 - 18 in your time at the corporate accounting group at
 - 19 Highland that had been made, any significant mistakes?
 - MR. MORRIS: Objection to the form of the
 - 21 question.
 - 22 THE WITNESS: Significant mistakes, not that
 - 23 I can recall.
 - 24 Q. (BY MR. RUKAVINA) No accounts payable
 - 25 mistakenly paid?

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- 1 after his e-signature was used either on these notes or
- 2 other documents in May of 2019, would you have brought
- 3 the documents back to him for any kind of verification?
- 4 **MR. MORRIS:** Objection to the form of the 5 question.
- 6 THE WITNESS: Probably not. These are all
- 7 very standard. We've papered hundreds of loans. So I
- 8 think he trusted that we can handle updating a date and
- 9 a dollar amount on these loan templates.
- 10 Q. (BY MR. RUKAVINA) Do you know or believe, or
- 11 your recent review of documents, did it reveal an email
- 12 from Mr. Waterhouse to you specifically authorizing his
- 13 e-signature on Exhibits 4 and/or 5?
- 14 A. Not that I recall seeing, no.
- 15 Q. Sitting here today, do you have any memory of
- 16 Mr. Waterhouse orally or otherwise specifically
- 17 authorizing you to affix his e-signature to Exhibits 4
- 18 and/or 5?
- 19 A. Specifically on these loans, no, I don't
- 20 recall those conversations. But, again, our practice
- $21\;$ has always been we have this discussion, he's under the
- 22 understanding that we're going to paper the loans, he's
- 23 always comfortable with using his e-signature.
- 24 This is not something me or my team would
- 25 have done without that authority and approval from him.

- 1 MR. MORRIS: Objection to the form of the
- 2 question.
- 3 THE WITNESS: I cannot specifically answer
- 4 that question with 17 years of work to recall, sorry.
- 5 MR. RUKAVINA: Just take a quick break. If
- 6 you need a restroom -- off the record.
- 7 (Off the record.)
- 8 Q. (BY MR. RUKAVINA) Going back to Exhibits 4
- 9 and 5.
- 10 Mr. Waterhouse signed these promissory notes.
- 11 Is there any particular reason why he signed them as
- 12 opposed to Dondero or someone else?
- 13 A. No particular reason. He's an officer for
- 14 both companies. He's a signatory.
- 15 Q. Who decided, if anyone, to your knowledge,
- 16 that he would be the one signing the notes, these two
- 17 notes?
- 18 A. I don't know who would have decided that, but
- 19 typically if Frank specifically wanted Jim Dondero to
- 20 sign it, he would say, take it to Jim to sign.
- Q. Do you have a recollection of
- 22 Mr. Dondero -- strike that.
- 23 Do you have a recollection of Mr. Waterhouse
- 24 signing other promissory notes?
- 25 A. Yes. I know for sure he has signed other

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1 promissory notes. I can't tell you explicitly which 2 ones.

3 (Off the record.)

4 Q. (BY MR. RUKAVINA) Are you saying that in May

5 of 2019 -- strike that.

6 By May of 2019, was it not the standard

7 practice at the debtor that Mr. Dondero would sign

8 intercompany promissory notes?

9 MR. MORRIS: Objection to the form of the 10 question.

11 THE WITNESS: No, that's not standard

12 practice. Just needed to be somebody -- somebody who

13 is a signer for the entity on the incumbency

14 certificate.

15 Q. (BY MR. RUKAVINA) Was there a standard

16 practice, or did you just describe the standard

17 practice that it was someone on the incumbency

18 certificate?

9 A. That's correct, somebody on the incumbency

20 certificate. Frank is a great prospect to sign, with

21 giving direction to set loans up, send money out. Why

22 wouldn't he sign it.

23 Q. Do you have any memory sitting here today of

24 Mr. Waterhouse telling you or agreeing that he would be

25 signing these two promissory notes for HCMFA?

1 Q. Well, let's go back a little bit in time.

Would you agree that at some point prior to

3 2019 the standard course was that paper notes were ink

4 signed?

5 MR. MORRIS: Objection to the form of the

6 question.

7 THE WITNESS: I could not tell you

8 specifically when notes were or were not ink signed.

9 Q. (BY MR. RUKAVINA) Was there any repository,

10 to the best of your recollection, as of May 2019 where

11 any ink-signed original promissory notes were kept by

12 the debtor?

13 A. No. We always would scan them in, save them

14 on our shared drive. Never had paper copies.

15 Q. So that's -- fixing to ask that question

16 next.

19

17 So Exhibits 4 and 5, would they even have

18 been printed after they were papered up?

MR. MORRIS: Objection to the form of the

20 question.

21 THE WITNESS: Possibly. Somebody could have

22 printed them.

23 Q. (BY MR. RUKAVINA) Do you remember printing

24 Exhibits 4 or 5 sitting here today?

25 A. I don't recall printing them myself, no.

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A. Not specifically, but he didn't need to tell

2 me. He typically would tell me if he wanted Jim to

3 sign them.

4 Q. Sitting here today, do you have any memory of

5 giving Mr. Waterhouse these two promissory notes after

6 they were prepared?

7 A. I specifically don't remember walking into

8 his office and providing it to him, but he could have

9 found it on our shared drive if he wanted to.

10 Q. Do you have any memory or in your recent

11 review of documents did you see any email to the effect

12 of you sending either or both of these promissory notes

13 to Mr. Waterhouse after they were papered up?

14 A. I don't have any specific recollection,

15 again, but he had access to look at them.

16 Q. On the shared drive?

17 A. Yes

18 Q. In May -- I'm going to ask this question

19 multiple different ways, so let's start with kind of

20 the general.

21 In May or by May of 2019, was there a

22 repository, electronic or paper, where the debtor kept

23 original promissory notes that were owed -- where money

24 was owed to it?

25 A. Original meaning paper?

1 Q. Would there have been a reason to print them

2 out if, as you said, the notes were stored

3 electronically?

MR. MORRIS: Objection to the form of the

5 question.

4

14

6 THE WITNESS: There could be a reason. I

7 don't recall that I for any reason printed these

8 particular notes.

9 Q. (BY MR. RUKAVINA) So as of May 2019, is it

10 your testimony that notes that were papered up by the

11 corporate accounting group would have been saved

12 electronically on the system and not kept by way of

13 paper copies in some file?

A. Correct. That's right.

15 Q. This is additional metadata. And you

16 understand I have a bit of an accent.

What are we on?

18 (Off the record.)

19 Q. (BY MR. RUKAVINA) Ms. Hendrix, Exhibit 8 is

20 going to be additional metadata for the May 3, 2019,

21 note that we've been looking at, and Exhibit 9 will be

22 the same thing for the May 2 note that we've been

23 looking at.

24 That's 8. That's 9.

25 (Whereupon, Exhibits 8 & 9 were marked for

Kristin Hendrix - October 27, 2021 57 59 1 identification.) 1 Obviously, you're welcome to use them anytime you need 2 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to to, but I think we're done with those notes. 3 represent to you again that my office has faithfully 3 Going to hand you what we're going to mark as 4 printed this metadata out without doctoring or changing 4 Exhibit 10, which is an email chain produced by the 5 anything, and I ask you to assume that. If I'm wrong 5 debtor. 6 on that, then your answers don't count. And I don't know how anyone on the video will Ma'am, as I look at these two documents, it 7 see it. I apologize. I'll have to send it to you 8 says last modified by Kristin Hendrix. Do you see that? 9 (Whereupon, Exhibit 10 was marked for 10 10 A. Yes. identification.) Q. (BY MR. RUKAVINA) Now, if you start with 11 Q. And that would have -- that could have only 11 12 been you; correct, in that department? 12 this email chain, it starts on November 19, 2020 from 13 A. I hope so, yes. 13 Jack Donohue to you, copying Mr. Seery and various 14 Q. Seeing these two documents, can you agree 14 others. 15 with me now that it was in fact you that papered up 15 Do you see that? 16 Exhibits 4 and 5? 16 A. Yes. 17 MR. MORRIS: Objection. Asked and answered. 17 Q. And Mr. Donohue is asking you to provide him 18 THE WITNESS: I would assume so since my name the financial records of HCMFA due to the funds owed 19 is on it, yes. 20 Q. (BY MR. RUKAVINA) Both of these documents 20 Do you see that? 21 say last printed -- I'm sorry. If you see related 21 A. Yes. 22 dates, it says last printed May 2, 2019, 11:27 A.M. Do 22 O. Do you recall that email from Mr. Donohue to 23 you? 23 you have any memory or any understanding as to why that 24 date would be there or what last printed might mean? 24 A. Yes. A. I don't know why it says last printed the day 25 Q. Do you recall any context or subsequent 58 1 discussions or how that email came to be, or do you 1 before it was created. That doesn't make any sense. I have no idea. 2 just recall getting that email? 3 Unless, the only thing I could think of is if 3 A. I just recall getting the email. 4 we changed this template. When I say "this," the 4 Q. You write back, hi Jack, Scott Ellington is 5 \$2.4 million loan, which was papered on the 2nd, and going to follow up with the board on this request.

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6 then used it for the next day for the template to 7 update the date, possibly. I have no idea.

Q. Well, it may be -- and I understand that you 9

don't have any memory; we're speculating a little bit.

10 It may be, looking at Exhibits 8 and 9, that 11 the \$2.4 million note was printed on May 2, and then

12 after having been used as the template for the

\$5 million note, the \$5 million note would not have

14 been printed.

Does that sound possible?

MR. MORRIS: Objection to the form of the 16

17 question.

15

18 THE WITNESS: Sure, it could be possible.

19 Q. (BY MR. RUKAVINA) But you don't have any

memory either way?

21 A. No. And when these were printed they're

22 printed to PDF, I believe, is probably what that means.

23 O. Okav.

24 We're going to switch gears a little bit now,

25 if you want to make a pile of those exhibits.

Do you see that?

7 A. Yes.

Q. Do you recall why you told Jack that

Mr. Ellington was going to follow up?

10 A. From what I recall, I had asked Frank

11 Waterhouse if it was okay to send these financials

12 over, and he wanted me to check with Scott Ellington

13 and that was Scott's response.

14 Q. And did he tell you why he wanted you to

15 check with Scott Ellington?

16 A. Just to make sure that there were no issues

17 with sending them over.

18 Q. Mr. Seery writes back, can I get this ASAP.

19 HCMFA is way overdue.

20 Do you see that?

21 A. Yes.

22 Q. And Mr. Seery writes again, it's about a week

23 later, and he says, this is an explicit direction from

24 me as CEO of HCMLP. But it looks like you are the

25 recipient of that December 2 email; correct?

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1 A. Yes.

- 2 Q. Do you remember him sending you that email
- 3 and copying those people?
- 4 A. Yes.
- 5 Q. Do you remember anything happening in that
- 6 week between his November 25 and December 2 email along
- 7 the same discussion lines?
- A. I don't remember anything. I think I was
- 9 probably left out of any discussions, and if there were
- 10 any, it was with Scott Ellington and whomever he had
- 11 discussions with.
- 12 Q. Then subsequent, on December 2, Mr. Seery
- 13 writes, all, Scott and I have spoken and agree that the
- 14 information should be provided to James immediately.
- 15 Would that have been James Romey, do you
- 16 think?
- 17 A. Yes.
- 18 Q. And who was James Romey?
- 19 A. He also worked for DSI.
- 20 Q. And then he writes, Kristin, please proceed
- 21 with James. If anyone has any questions or issues,
- 22 please call me.
- 23 Do you see that?
- 24 A. Yes.
- 25 Q. Did you proceed with James Romey?

- 1 you, copying Waterhouse, Seery, a bunch of others.
- Where he says, at the direction of Jim Seery,
- 3 please provide DSI with the requested information for
- 4 each entity below.
- 5 And you'll see the entity includes both of my
- 6 clients, NexPoint Advisors and HCMFA. And the
- 7 information includes bank statements, income
- 8 statements, balance sheets, cash flows.
- 9 Do you see that?
- bo you see u
- 10 A. Yes.
- 11 Q. Do you recall this email?
- 12 A. Vaguely, yes.
- 13 Q. Did you have any concerns when you received
- 14 this email?
- 15 A. Concerns about the email, no. I probably
- 16 checked with -- I would have checked with Frank to make
- 17 sure it was okay to send this first.
- 18 Q. Frank Waterhouse?
- 19 A. Yes.
- Q. Do you have any understanding as to why
- 21 Mr. Donohue requested bank statements, income
- 22 statements, balance sheets for NexPoint and/or HCMFA?
- 23 A. I do not.
- 24 Q. Did he or anyone at DSI tell you why they
- 25 were requesting that?

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- 1 A. I further made sure that Scott was okay, to
- 2 confirm. He said yes, please do, and I did send them
- 3 to James Romey.
- 4 Q. So Mr. Seery has some of it in this email
- 5 chain, but do you have any understanding as to why
- $6\,\,$ either DSI or Mr. Seery in November of 2020 was asking
- 7 for the financial records of HCMFA?
- 8 A. I do not, other than what's in this email.
- 9 Q. Did you discuss with either DSI or Mr. Seery
- 10 or Mr. Waterhouse in November or December 2020 whether
- 11 the demand notes from HCMFA should be demanded, should
- 12 be called?
- 13 A. I did not have discussions.
- 14 Q. Next exhibit is Exhibit 11. This is another
- 15 email chain.
- 16 And I apologize to the folks on the video.
- 17 I'll have to get it to you during some break.
- 18 MR. MORRIS: Hold on one second.
- 19 MR. RUKAVINA: Sure. Off the record.
- 20 (Off the record.)
- 21 (Whereupon, Exhibit 11 was marked for
- 22 identification.)
- Q. (BY MR. RUKAVINA) Exhibit 11, Ms. Hendrix,
- 24 if you'll go to the beginning of this email chain, is
- 25 an email on January 6, 2021, again from Mr. Donohue to

- 1 A. Not that I can recall.
- Q. If we go forward in time, you'll see that
- 3 Mr. Waterhouse is writing back to Mr. Donohue. And
- 4 then Mr. Seery interjects and says, these are HCMLP
- 5 business records. Please provide them as requested by
- 6 Jack ASAP.
- 7 Do you see that?
- 8 A. Yes.
- 9 Q. And it looks like you were not privy to
- 10 subsequent communications where Frank and Jim were
- 11 talking back and forth about this. You were not privy
- 12 to those, like you weren't blind copied or anything to
- 13 your recollection?
- 14 A. No.
- 15 Q. Did you in fact on or after January 6, 2021,
- 16 provide Mr. Donohue or anyone on his team the
- 17 information that he had requested as it relates to
- 18 NexPoint and/or HCMFA?
- 19 A. Without going back to check, I couldn't
- 20 answer yes or no for certain.
- 21 Q. So I think you mentioned when you received
- 22 the email from Mr. Donohue you would have checked with
- 23 Frank. And what do you remember asking Frank or
- 24 checking with him about?
 - A. I don't remember asking him specifically. In

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- 1 fact, it's possible that Frank just responded on his
- $2\,\,$ own here to Jack. Again, would have been a
- 3 conversation that I can't specifically recall.
- 4 Q. Sure. And you don't specifically remember
- 5 today providing Mr. Donohue any of that information;
- 6 right?
- 7 A. Right.
- 8 Q. You don't specifically remember today having
- 9 a discussion with Mr. Donohue or Seery or anyone else
- 10 at or about that time as to why they were wanting this
- 11 information?
- 12 A. Correct.
- 13 Q. Exhibit 12, Ms. Hendrix, is going to be the
- $14\ \ \, December\ 3,2020, letter\ by\ which\ Highland\ called\ the$
- 15 notes.
- **MR. MORRIS:** Objection to the form of the
- 17 question if there was one.
- 18 (Whereupon, Exhibit 12 was marked for
- identification.)
- 20 Q. (BY MR. RUKAVINA) Are you familiar with
- 21 Exhibit 12, Ms. Hendrix?
- 22 A. No, I haven't seen this.
- 23 Q. Prior to today, you don't remember seeing
- 24 this?
- 25 A. No.

- 1 to?
 - A. We had a standing weekly cash meeting with
 - 3 Frank Waterhouse, myself, Jim Seery. I can't recall
 - 4 everyone on it. Some of the DSI folks. We go through
 - 5 cash forecasts. It's a 13-week cash forecast. We go
 - 6 through it every week.
 - It's going to lay out incoming and outgoing
 - 8 payments that are forecasted, of which these term loans
 - 9 were in those forecasts, so they were discussed.
 - 10 Q. And Mr. Morris produced some of those to me
 - 11 this morning. I haven't had time to go through them.
 - But it is your recollection in November and
 - 13 December of 2020 the fact of the NexPoint term note
 - 14 being out there was known to Mr. Seery?
 - 15 A. Yes.

12

- 16 Q. And the fact of an upcoming December 31,
- 17 2020, payment was known to Mr. Seery?
- 18 A. Yes.
- 19 Q. So with that background, in November and
- 20 December of 2020, do you remember discussing with
- 21 anyone anything to the effect of, oh, it really would
- 22 be better if NexPoint defaulted on that note so we
- 23 could call it?
- 24 A. No.
- 25 Q. Did Mr. Seery ever state to you anything in

66

- 1 Q. I think you're answering no?
- 2 A. No, sorry, no.
- 3 Q. On or before December 3, 2020, did anyone
- 4 discuss with you whether Highland should call the
- 5 demand notes that were outstanding by HCMFA?
- 6 A. No.
- 7 Q. Do you recall in December 2020 any discussion
- 8 with anyone at the debtor about the NexPoint
- 9 \$30.7 million term note?
- 10 A. Repeat your question again, please.
- 11 Q. Sure. So you're familiar, and we'll talk
- 12 about it in some detail, with the NexPoint
- 13 \$30.7 million note?
- 14 A. Yes.
- 15 Q. And again, we'll talk about it, but at that
- 16 point in time that was a term note; correct?
- 17 A. Correct
- 18 Q. Do you remember in the December 2020 or
- 19 November 2020 time frame discussing with anyone at the
- 20 debtor the status of that NexPoint note?
- A. Yes, we would have discussed this on a weekly
- 22 basis in our cash meetings that we would have had, as
- 23 identifying that there are payments due on these loans
- 24 in December.
- 25 Q. What weekly cash meetings are you referring

- 1 November or December of 2020 about how the debtor might
- 2 monetize that NexPoint note?
- 3 A. No.
- 4 Q. Did he discuss with you any potential sale of
- 5 that promissory note?
 - A. No.
- 7 Q. Did DSI ever discuss with you in November or
- 8 December 2020 any potential sale of that note?
- 9 A. No.
- 10 Q. Or how to monetize that note?
- 11 A. No.
- 12 Q. So -- well, strike that.
- 13 Did Mr. Seery or anyone at DSI, or anyone at
- 14 all, in November or December of 2020 state any words to
- 15 you to the effect that they were hoping that NexPoint
- 16 would default on that note?
- 17 A. Never.
- 18 Q. Or that it would be in the debtor's interest
- 19 for NexPoint to default on that note?
- 20 A. No.
- 21 Q. In November or December of 2020, do you
- 22 recall having any discussions with Mr. Seery or anyone
- 23 at DSI as to the collectibility of that note? And by
- 24 that I mean whether NexPoint can pay the note?
- 5 A. I don't specifically recall. It most likely

18 (Pages 69 to 72)

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69 71 1 came up in cash conversations. 1 not? 2 Q. I think you were assistant controller back 2 A. Yes. 3 then? Q. What's your understanding? 3 4 A. Yes. A. Either November 30 or December 1, 2020, I 5 5 received a phone call from Frank Waterhouse that said, Q. Would a discussion of a borrower's ability to 6 repay have been something within your general sphere of no payments are going from any of the Advisors to responsibility in that time frame? Highland. MR. MORRIS: Objection to the form of the 8 Q. Can you be more specific with what he said? 8 9 A. That's what he said. question. Q. So he said no payments from the Advisors to 10 10 THE WITNESS: It depends on who the borrower 11 Highland? 11 is, and at that time we did -- we had knowledge over 12 A. Yes. 12 that information, so yes. 13 Q. Did he reference the promissory note 13 Q. (BY MR. RUKAVINA) Well, you've seen some 14 expressly? 14 instructions or requests from Mr. Seery to you and DSI 15 to you for financial information of NexPoint and HCMFA. 15 A. No. Q. But no payments means? 16 We've gone through those documents; right? 16 17 A. Nothing. 17 A. Yes. 18 Q. That would logically in your mind include the Q. Does that refresh your memory that there was 19 promissory note? 19 any internal discussion that you were privy to about 20 A. Yes. 20 the ability of HCMFA and/or NexPoint to pay these 21 Q. Did you ask him why? 22 A. No. 22 A. I don't recall that specifically being asked. 23 Q. Did he tell you why? 23 It could have. 24 A. No. Q. Did you ever at any point in time have any 25 Q. Did you, prior to January 1, 2021, did you 25 employment or officer or any title or role with 70 72 1 NexPoint Advisors, LP? 1 hear from anyone as to why Mr. Waterhouse gave that 2 A. No. 2 instruction? 3 Q. Were you ever the controller or assistant 3 A. Not that I recall. 4 controller for NexPoint Advisors LP? Q. Did you, after that November 30 or December 1 5 phone call, did you follow up with him or anyone else about the upcoming note payment? Q. Did you ever at any point in time have any employment, officer or any title or role at HCMFA? A. I didn't have any reason to. Q. I'm going to -- let me find you a document Q. Were you ever the controller or assistant for a moment. 10 controller of HCMFA? 10 Just so the record is complete, let's include 11 A. No. 11 this promissory note. It's going to be Exhibit 13. Q. So you might have indirectly provided 12 This is the NexPoint promissory note. 13 services to those two as part of shared services, but 13 (Whereupon, Exhibit 13 was marked for never directly; is that fair? 14 identification.) 15 MR. MORRIS: Objection to the form of the 15 Q. (BY MR. RUKAVINA) I take it you've seen this 16 question. 16 promissory note, Exhibit 13? THE WITNESS: When you say never directly, 17 17 A. Yes. 18

18 meaning I was not employed by those entities?

19 Q. (BY MR. RUKAVINA) Correct.

20

A. That's correct.

21 Q. Do you have any understanding -- first of

22 all, NexPoint did not make a payment on December 31,

23 2020; correct?

24 A. Correct.

25 Q. Okay. Do you have any understanding of why

Q. And I think you testified about this before,

19 but just to summarize to save time.

20 This would have been a note that you would

21 not have papered but would have gone through legal

22 because it was a roll-up. Is that generally accurate?

23 A. Yes.

24 Q. And do you have any memory at all of having

25 anything to do with papering up this loan?

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- 1 A. Not that I recall.
- 2 Q. Would you have had, after 2017 and before
- 3 2021, any role with respect to any payments or upcoming
- 4 payments on this note, any role at all?
- 5 A. Yes.
- 6 Q. What would have been your role or roles?
- A. That would have been taking direction from
- 8 Frank Waterhouse or possibly Jim Dondero saying, go
- 9 ahead and make these payments that are due on these
- 10 term notes.
- 11 Q. Would you have recorded on any books or
- 12 records payments that actually were made?
- 13 A. Not me personally.
- 14 Q. Who would have?
- 15 A. Our accountant, which could have been one of
- 16 two different people, depending on the time frame.
- Q. Would you have had any role with respect to
- 18 recording those payments or is that just something that
- 19 your group would have done?
- 20 MR. MORRIS: Objection to the form of the
- 21 question.
- THE WITNESS: I would not have had a role.
- 23 My group would have.
- Q. (BY MR. RUKAVINA) What about calculating
- 25 amortization and/or interest payments that are due or

- 1 A. At my house.
- 2 Q. Did you answer on a cell phone or landline?
- 3 A. My cell phone.
- 4 Q. Is there any chance in hell that your cell
- 5 phone would still have a record of that phone call,
- 6 like what time it was and how long it lasted?
- 7 MR. MORRIS: Objection to the form of the 8 question.
- 9 Q. (BY MR. RUKAVINA) I apologize for using 10 hell.
- 11 MR. MORRIS: And to foundation.
- 12 THE WITNESS: I have no idea.
- 13 Q. (BY MR. RUKAVINA) Do you have your cell
- 14 phone with you right now?
 - A. In the other room.
- 6 Q. I might ask you during the break to just --
- 17 we'll take a short break before I'm done, and I'll ask
- 18 you if you've had a chance to look for November and
- 19 December 2020 phone logs between you and
- 20 Mr. Waterhouse. I would ask you to do that, please.
- 21 A. Sure.

15

- 22 Q. And I apologize, I think you said you thought
- 23 it was a short telephone call?
- 24 A. I have no idea.
- 25 Q. Did the telephone call or Mr. Waterhouse's

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- 1 upcoming? Who would have done that, you or someone
- 2 else?
- 3 A. Our accountant.
- 4 Q. Do you have any memory of doing that?
- 5 MR. MORRIS: Objection to the form of the
- 6 question.
- THE WITNESS: Not during 2017 through 2019.
- 8 Q. (BY MR. RUKAVINA) What about 2020?
- 9 A. No.
- 10 Q. Going back to that November 30 or December 1
- 11 telephone call, do you recall who initiated the call?
- 12 A. To me?
- 13 Q. The one between you and Mr. Waterhouse.
- 14 A. Frank called me.
- 15 Q. Frank called you.
- 16 And was it just to discuss -- or just to give
- 17 you that instruction, no payments from the Advisors, or
- 18 was there other things discussed?
- 19 A. I could not tell you if something else was
- 20 discussed on that phone call.
- Q. Do you remember if it was a long phone call
- 22 or short?
- 23 A. Couldn't tell you.
- Q. Do you remember where you were when he called
- 25 you?

1 instructions surprise you in any way?

- A. Nothing surprises me anymore, so no.
- 3 Q. Did it surprise you back in November or
- 4 December of 2020?
- 5 A. No.
- 6 Q. Did it pique your curiosity?
- 7 A. Nope.
- 8 Q. Just another instruction from your boss?
- 9 A. Yep.
- 10 Q. Exhibit 14 is going to be a document that
- 11 we're not sure what it is and we're not sure who
- 12 prepared it. It appears to be a ledger of charges
- 13 against and payments on this promissory note.
 - I'm just saying that so the people on the
- 15 phone know what it is, but you don't have to take what
- 16 I said as correct.
- 17 (Whereupon, Exhibit 14 was marked for
- 18 identification.)
- 19 Q. (BY MR. RUKAVINA) So Ms. Hendrix, Exhibit 14
- 20 was produced by the debtor. And I'm going to ask you,
- 21 do you know what this is or have you seen it before?
- 22 Can you help us state what it is?
- 23 A. This looks like it is an amortization
- 24 schedule of the NexPoint Advisors term loan.
- 25 Q. Would this have been something that it

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77 **79** 1 appears to you would have been maintained internally by 1 change but it doesn't use brackets? 2 the debtor, or does it look like it might have been 2 A. It's a negative number. It's just a 3 prepared by DSI or someone else for some other reason? 3 formatting issue. A. It looks like the debtor's amortization Q. What about also on that same page in the 5 other column, principal paid, 5/31/2020, it's a 5 schedule that they kept. Q. Did the debtor keep an amortization schedule positive number, 575,550. 7 for the NexPoint promissory note, to your knowledge? MR. MORRIS: Where are you? 8 MR. RUKAVINA: On page 2 of this exhibit. 9 Q. Did the debtor keep amortization schedules MR. MORRIS: What date? 10 MR. RUKAVINA: May 31, 2020. And it's the 10 for other term promissory notes? 11 column over, principal paid. It's a positive number, 11 **12** 575,000 and change. 12 Q. In what format, like Excel spreadsheets or 13 MR. MORRIS: Got it, thank you. 13 Word documents? What is your recollection for NexPoint 14 Q. (BY MR. RUKAVINA) Do you see that, specifically? 15 A. Excel. 15 Ms. Hendrix? 16 Q. Would that have been on the shared system or A. Yes. 17 Q. Do you have an understanding of why that something? A. Yes. 18 number would be positive? 18 A. Actually, I think this looks like an entry to 19 Q. And who would have been responsible on an 20 me where the interest is what we call picking. So on 20 ongoing basis to update the NexPoint amortization 21 the anniversary date of this loan, which is May, from 21 schedule? 22 what I can tell, the accrued interest total, which is MR. MORRIS: Objection to the form of the 22 23 that 575-, is being rolled into principal. 23 question. 24 That's what I can tell from looking at it. 24 THE WITNESS: Depends on what time you're 25 Q. Okay. Do you have any understanding as to 25 asking. 78 80 1 why that would have been done or why that would have 1 Q. (BY MR. RUKAVINA) Let's talk about the year 2 of 2020. been done on that day? 3 A. That would have been Hayley Eliason, our 3 MR. MORRIS: Objection to the form of the 4 accountant at that time. 4 question. 5 Q. What about the year 2019? 5 THE WITNESS: Because that's the anniversary 6 A. Still Hayley. 6 date of the loan. I would assume that that's how the 7 MR. RUKAVINA: I'm going to just ask, to loan is written. 8 preserve the record, Mr. Morris, if he hasn't already, Q. (BY MR. RUKAVINA) And I think that that to produce any such Excel spreadsheet in the native Section 1 of the promissory note does say, the unpaid 10 form. principal balance of this note from time to time 11 O. (BY MR. RUKAVINA) If we look at this, 11 outstanding shall bear interest. 12 Ms. Hendrix -- and I'm a little confused as to what 12 At the rate of 6 percent per annum from the 13 these entries mean. Maybe you could help me. But 13 date hereof until maturity date, compounded annually on 14 columns that say interest paid, principal paid, total the anniversary of the date of this note. 15 paid, do you know what those columns mean? 15 Do you see that? A. Exactly as they state. These are interest 16 MR. MORRIS: Objection to the form of the 17 and principal payments made on the date that's listed, 17 question. 18 THE WITNESS: Yeah, I see that. and then you've got a total. 19 19 Q. (BY MR. RUKAVINA) Assuming that this is the Q. And then they're in brackets because they're 20 negative numbers? correct amortization schedule for the NexPoint note,

25 12/30/29 [verbatim] that says negative 530,000 and 25 A. At the top, yes.

Q. So here's what I'm not understanding. Go to

You see there's an entry under interest paid

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24

21 and that the numbers in here are correct, if you look

22 at the second page under the column total paid there

Do you see that, the far right column?

23 are a number of entries for 2019.

21

22

24

A. Correct.

23 the second page.

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- Q. For example, 1.3 million, 2.1 million,
- 2 1.3 million.
- 3 Do you see that?
- 4 A. Yes.
- 5 Q. Assuming that that's correct, do you have any
- 6 memory or understanding whether in the year 2019, or
- why NexPoint was making these payments on this
- promissory note?
- A. Without going back and reading through emails
- 10 I can only assume that, from looking at this, Highland,
- 11 the debtor, would have needed cash, and so this is one
- 12 way of getting cash to the debtor.
- Q. This is kind of like what we discussed in the 13
- 14 beginning, that Mr. Dondero on a cash needed basis
- 15 would just transfer money between entities?
- 17 Q. Do you have any memory in the first half of
- 18 2019 whether Highland, the debtor, had any particular
- need for cash money at that time?
- 20 A. We generally always had a need for cash, so
- 21 yes.

1

- Q. And so if NexPoint was transferring money
- 23 back to Highland on this note because Highland needed
- 24 the money, would those have been recorded as
- 25 prepayments by the debtor?

- 1 Exhibit 15 and I'm going to represent to you that it's
- 2 the email that Mr. Morris sent to me today and I've not
- doctored it in any way.
- 4 (Whereupon, Exhibit 15 was marked for
- 5 identification.)
- 6 **MR. MORRIS:** Do you have the email that it
- 7 was attached to?
- 8 MR. RUKAVINA: Somewhere. I can find it at a
- 9 break.

10

- MR. MORRIS: I'll let the witness testify.
- 11 This was attached to an email. Not my email, but
- 12 another email. But I'll let the witness testify.
- MR. RUKAVINA: Off the record. 13
- 14 (Off the record.)
- 15 Q. (BY MR. RUKAVINA) So you have Exhibit 15.
- And during the break we established, I don't 16
- 17 have a copy of it right now, but you sent Exhibit 15 on
- August 29, 2020, to Mr. Dondero by email, copying
- Mr. Waterhouse, as well as a couple of other
- 20 attachments; is that correct?
- 21 A. Correct.
- 22 Q. Do you recall what prompted you to send that
- 23 email and this attachment?
- 24 A. Yes.
- 25 Q. What?

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- 1 A. Frank Waterhouse called me on August 29, and
 - 2 requested that I do so.
 - 3 Q. Did he tell you why?
 - 4 A. From what I recall, this was a time when Jim
 - 5 was trying to come up with his bargain or pop land,
 - 6 whatever he referenced it as. This was all information
 - that Frank said he wanted.
 - Q. Okay. So going back to Exhibit 15, what I'm
 - interested in is NexPoint Advisors, the 23,846,000 and
 - 10 change number.
 - 11 Do you see that?
 - 12 A. Yes.
 - 13 Q. Where did that number -- or where did this
 - 14 Exhibit 15 come from, if you understand my question?
 - A. Sure. These numbers should all be balances
 - 16 off of the corresponding notes that each entity owed to

 - 18 Q. Did you or someone prepare Exhibit 15
 - 19 specifically for that email? Or was Exhibit 15 already
 - existing somewhere on the system?
 - 21 A. I believe that we prepared it specifically
 - 22 for this request.
 - 23 Q. Do you recall who?
 - 24 A. It was either myself or our accountant. I
 - 25 don't recall who put it together.

MR. MORRIS: Objection to the form of the

question. 2 3 THE WITNESS: Yes.

- 4 Q. (BY MR. RUKAVINA) Sitting here today, do you
- 5 have any reason to believe based on the formatting or
- 6 anything on Exhibit 14 that it's not the amortization

A. I don't have any reason to not believe that

- schedule as it was maintained by the debtor?
- 9 it was.

- 10 Q. Going to show you a few documents that I'm
- 11 hopefully going to burn through, but you're certainly
- 12 entitled to take all the time that you need.
- 13 So first is going to be a document that
- 14 Mr. Morris produced this morning. It's not Bates
- 15 labeled. I don't know why.
- 16 MR. MORRIS: As I said in my email, my
- paralegal is sick and so I wanted you to have the
- documents. We'll Bates stamp them later, but we have a
- 19 written record from my email of what we produced to
- 20 you.
- 21 MR. RUKAVINA: You're assuming that I read my
- 22 emails.
- 23 MR. MORRIS: Sorry about that. I confess,
- 24 sometimes I don't as well.
- 25 Q. (BY MR. RUKAVINA) So I'm going to hand you

22 (Pages 85 to 88)

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87 85 Q. Okay. And where would that 23 million and 1 Do you see that, ma'am? 2 change number for NexPoint have come from, an 2 A. Yes. 3 amortization schedule? 3 Q. 23 million 683? 4 A. Yes. 4 A. Yes. Q. And what about Highland Capital Management 5 Q. And you see, HCMFA due to HCMLP as of June 30, 2020, 12,286,000? 6 Fund Advisors? You see \$10.5 million and change demand 6 on Exhibit 15? MR. MORRIS: Objection to the form of the 8 A. Yes. question. 9 Q. Where would that \$10.5 million number have Q. (BY MR. RUKAVINA) Strike that. 10 It says 12,286. What do you take that 12,286 10 come from, do you remember? 11 to mean? 11 A. The same. It would have come off of the A. I think that's a typo and it should have 12 amortization schedules for all of their notes. 12 13 said -- well, there's several things wrong with this, 13 Q. How was there an amortization schedule for a 14 from looking at it. 14 demand note? 15 15 A. Because it's accruing interest. She left off three zeros on the end of it. 16 Should have said 12,286,000. Secondly, that amount is Q. So sitting here today, you expect there would 17 be some amortization schedule like Exhibit 14 but for 17 our due to affiliates on HCMFA's books, not just due to 18 HCMLP. 18 HCMFA? Q. That was going to be my question, why that 19 A. Yes. 20 12,286,000 number didn't jive with the 10,530,000 20 Q. Now we're going to have an exhibit [verbatim] 21 number on Exhibit 15? 21 chain that's going to be marked as Exhibit 16. 22 A. Yes, there's another loan due to a different 22 (Whereupon, Exhibit 16 was marked for 23 affiliate. 23 identification.) 24 Q. So that \$12,286,000 amount doesn't mean that 24 MR. RUKAVINA: For the folks on the video, 25 it's all due to Highland; is that correct? 25 Exhibit 16 is the email chain that Mr. Morris used last 86 88 1 1 week regarding the Section 15(c) document. A. Correct. Q. Exhibit 17 is going to be the January 7, 2021 Q. (BY MR. RUKAVINA) Are you familiar with this 2 3 Exhibit 16 email chain, Ms. Hendrix? notice from the debtor to NexPoint about the default. A. Yes. 4 (Whereupon, Exhibit 17 was marked for 5 Q. Why are you familiar with it? 5 identification.) Q. (BY MR. RUKAVINA) You've been handed A. Well, I'm copied on it, and I saw it 7 Exhibit 17. Have you seen this document before? 7 yesterday. Q. Do you have any memory -- well, that's a 8 A. Not that I believe. stupid question. But prior to yesterday, did you have Q. And I think we've asked this before, but just 10 any memory of this? 10 to clarify. 11 A. Yes. 11 Did anyone at the debtor, including Mr. Seery Q. And do you recall the context or the purpose 12 or DSI, discuss with you after December 31, 2020 that 13 of this exhibit, or this email chain? 13 the payment had not been made and what, if anything, A. From what I remember this is the time where 14 the debtor should do about that? 15 information was being prepared for the retail board to 15 MR. MORRIS: Objection to the form of the 16 re-up the debtor's shared services. 16 question. 17 THE WITNESS: I can't recall specific Q. So, here -- you're certainly welcome to read 18 it in its entirety and if you feel like you want to or 18 conversations that may or may not have been had around 19 need to, that's fine. But I only have one question. 19 that topic. 20 Well, one question with two subparts. Q. (BY MR. RUKAVINA) Would -- so back then you 20 21 21 were the assistant controller, on January 7; right? I'm looking at Ms. Lauren Thedford's, 22 A. Yes. 22 T-h-e-d-f-o-r-d's, email October 6, 2000 [verbatim]

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Q. Do you think that back then Mr. Seery or DSI

24 would have sought your advice or input as to what they

25 should do about the missed payment?

25 June 30, 2020.

23 where she says, I see the below from the 6/30

24 financials. NPA, due to HCMLP and affiliates as of

23 (Pages 89 to 92)

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89 91 1 A. No. 1 Q. Were you aware of it then? 2 MR. MORRIS: Objection to the form of the 2 A. Was I aware of what? 3 question. 3 Q. That transfer of \$1.4 million and change. 4 THE WITNESS: No. 4 A. On January 14? 5 Q. (BY MR. RUKAVINA) That would have been 5 Q. Yes. 6 outside of your purview? 6 A. Yes. Q. Did you facilitate that transfer? 8 8 Q. And you see in this notice in the middle, it Q. Who told you to make that transfer? says an amount due as of January 8 in the \$24,471,000 10 A. Frank Waterhouse. 11 11 Do you see that? Q. Did he tell you why? 12 12 A. Yes. A. Nope. Q. Do you have any idea, I take it you don't, 13 Q. He just said make the transfer? 13 where that number came from? 14 14 A. Yes. MR. MORRIS: Objection to the form of the 15 15 Q. Did he tell you that it was on account of the 16 question. 16 NexPoint note? 17 THE WITNESS: I don't know who provided that 17 A. Yes. 18 number or where it came from. 18 Q. Did he tell you how to, if at all, to credit Q. (BY MR. RUKAVINA) Do you have any 19 that note for that amount? 20 understanding as to why that number is higher than the 20 A. No. 21 number on Exhibit 15? 21 Q. Sitting here today, you have no memory other A. My guess would be that Exhibit 15 is just 22 than that Frank Waterhouse told you to transfer some 23 23 \$1.4 million on the NexPoint note? principal balances. 24 Q. Okay. 24 A. Right. 25 25 Exhibit 18, please. Q. And do you recall, was that oral or written 90 92 (Whereupon, Exhibit 18 was marked for 1 1 or how would that have been? 2 identification.) A. That was a phone call. Q. (BY MR. RUKAVINA) Exhibit 18, Ms. Hendrix, 3 Q. Do you recall who initiated the phone call? 4 is an email chain between you and Mr. Waterhouse on 4 A. Frank called me. 5 January 12, 2021. Do you remember this email chain? Q. Was that the only topic discussed in that phone call to your memory? A. Yes. 7 Q. Do you remember on January 12 Mr. Waterhouse emailing you, asking when the last amort payment due Q. Did you ask him why the payment or and what the amount was for NexPoint? anything -- did you ask him anything at all? 10 A. No. 10 A. No. 11 Q. When was the last time -- well, strike that. Q. And after you made the payment -- or I'm 11 12 Do you remember ever seeing this email 12 sorry, after you caused the payment to be made, did you 13 between then and today? 13 take any further steps with respect to the NexPoint 14 14 note? Q. Do you have any present memory of any 15 A. I forwarded the payment confirmation, showing 16 communications with Mr. Waterhouse on or about 16 that the money was sent from NexPoint Advisors to 17 January 12, 2021 regarding the NexPoint default or 17 Highland, forwarded that payment confirmation from the 18 note? 18 bank to Jack Donohue at DSI, letting him know. 19 19 A. Not specific, no. Q. Did you let Mr. Donohue or anyone at DSI know 20 Q. Any general memory? 20 about the transfer before the transfer was made? 21 A. Not that I can pinpoint, no. 21 A. No. 22 Q. And you sent that by email to Mr. Donohue? Q. Were you aware that on or about January 14 23 NexPoint transferred about \$1.4 million and change to 23 A. Yes. 24 the debtor? O. Did Mr. Donohue thereafter have any 24

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A. Yes.

Kristin Hendrix - October 27, 2021 93 95 1 A. I have no idea. 1 proceedings today. 2 Q. He didn't ask what this was for or anything I'm going to try to ask you some questions 3 like that? 3 about these adversary proceedings. I'll try to make it A. He may have asked what the amount as quick as possible so we don't keep you here. 4 5 represented. I can't specifically recall. But it's You understand that you're still under oath; 6 possible. 6 is that correct? Q. Okay. Do you recall any discussion about A. Correct. 8 that time, January 14, with Mr. Donohue or Q. First topic I want to ask you about is one of 9 Mr. Waterhouse or anyone as to whether that payment the defenses in this case related to an oral agreement. 10 would in any way relieve NexPoint of the default or 10 Let me start off with this question. 11 would not relieve NexPoint of the default? 11 Are you aware that some of the defendants in 12 A. No. 12 these adversary proceedings have raised a defense that Q. Ms. Hendrix, I believe that I am done. I there was a subsequent oral agreement allowing the 13 14 would like you, however, because it's important, to 14 notes at issue to be potentially forgiven if certain 15 check your phone. Would you like a short, five-minute 15 events occurred? 16 restroom break and just check --A. I've recently been made aware that this came 16 17 17 up, yes. A. Yeah, and I might need help figuring out how 18 to do that. 18 Q. When you say recently, approximately when? 19 Q. I'm not saying that it's possible, but I'm 19 A. Within the last week. going to ask you on the record to look for that 20 Q. And where did you learn that from? 21 November 30 or December 1, 2020 phone call. 21 A. In my speakings with John Morris just 22 MR. MORRIS: We're happy to do that. 22 preparing for today. 23 Q. (BY MR. RUKAVINA) But what I would like if 23 MR. AIGEN: And John, I'm going to assume you find it, I would like you to tell me the time, the 24 that those conversations are privileged? 25 25 date and the length of that call. MR. MORRIS: That's a very fair assumption. 94 Q. (BY MR. AIGEN) Other than the conversation 1 A. Okay. 2 you just referred to with Mr. Morris, have you ever had O. Thank you.

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3 We'll be back in five minutes.

4 (Off the record.)

5 Q. (BY MR. RUKAVINA) Ms. Hendrix, during the

6 break did you look at your phone?

A. I did.

8 Q. Did you find anything?

A. Sadly, it only goes back to October 5 of

10 2021.

11 Q. Not surprised. Thank you.

12 Have I been courteous to you today?

13 A. Yes.

14 MR. RUKAVINA: I pass the witness.

15 MR. MORRIS: Thank you.

16 **MR. AIGEN:** Are we ready to move forward?

17 MR. MORRIS: Yes. You're a little dark

18 there.

22

19 MR. RUKAVINA: Can we increase the volume on

20 that thing?

21 (Off the record.)

EXAMINATION

O. (BY MR. AIGEN) Good afternoon, Ms. Hendrix.

24 My name is Michael Aigen. I represent Mr. Dondero,

25 HCMS and HCRE Partners in several of the adversary

3 any other conversations with anyone about this alleged

oral agreement that Defendants are contending occurred?

5 A. No.

Q. So prior to that conversation with Mr. Morris

you weren't even aware of this alleged defense related

to an oral agreement. Is that fair to say?

9 A. That's right.

Q. This is a similar question but slightly

11 different, just to sort of finish this topic. I'm not

12 asking about this oral agreement as a defense, I'm just

13 asking more generally.

14 Other than this conversation, were you aware

15 generally of any conversations that anyone had where

16 the notes at issue might be forgiven if certain events

occurred?

18 MR. MORRIS: Objection to the form of the

19 question.

20 THE WITNESS: No.

Q. (BY MR. AIGEN) Is it fair to say that you 21

22 haven't had any conversations about this subsequent

23 oral agreement with anyone other than Mr. Morris?

24 A. That's fair.

Q. You never discussed it with Mr. Seery?

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- 2 Q. Never discussed it with Mr. Klos?
- 3 A. No. Well, sorry, Mr. Klos was present when
- 4 John and I talked about it. But that's it.
- 5 Q. Have you ever made any investigation or
- 6 effort in order to determine if this oral agreement
- 7 actually occurred?

A. No.

8 A. No.

1

- 9 Q. If there was such an oral agreement to
- 10 potentially forgive the notes, do you believe that you
- 11 would have known about such an oral agreement as part
- 12 of your duties and responsibilities?
- 13 A. Yes, I would hope so.
- 14 Q. Why do you say that?
- 15 A. That's something that should be disclosed in
- 16 audited financial statements, and me and my team are
- 17 responsible for preparing those financial statements
- 18 and presenting them to the auditors as fair and
- 19 accurate.
- Q. And is it fair to say that this oral
- 21 agreement should have been disclosed to PwC if it was
- 22 determined that it was material?
- 23 A. Yes.
- 24 Q. And have you done any sort of analysis to
- 25 determine whether the oral agreement at issue here

- 1 A. Yes.
- 2 Q. Can you tell me why?
- 3 A. Sure. It goes along with the same statement
- 4 as HCMFA and NPA and the phone call that I got from
- 5 Frank Waterhouse saying there's no payments coming from
- 6 any of the affiliates to the debtor.
- 7 Q. I may have written that down wrong when you
- 8 talked about that before, but I believe your earlier
- 9 testimony when you described that conversation was that
- 10 there was no more payments coming from the Advisors,
- 11 not affiliates.
- 12 Let me ask you then, what was the
- 13 conversation? Was it no more payments from affiliates
- 14 or Advisors?
- 15 A. It could have been either. I probably did
- 16 say Advisors. But regardless, those payments would
- 17 have been directed to me to be made, either by Frank
- 18 Waterhouse or Jim Dondero.
- 19 And I would assume that nobody directed me to
- 20 make those payments because we weren't making any
- 21 payments from Jim's related parties. I don't know for
- 22 a fact, but that's what I would assume. Those were all
- 23 under the same umbrella.
- Q. And again, let's back up a second.
- 25 When you refer to Advisors, fair to say that

- 1 would have been material for purposes of a PwC audit?
- A. I've not done any work, just finding out
- 3 about it, but from what it sounds like, it would be
- 4 material.
- 5 Q. That's your opinion, that it would have been
- 6 material; is that fair to say?
- 7 A. Fair.
- 8 Q. Have you had any discussions with anyone else
- 9 about whether the oral agreement would have been
- 10 material?
- 11 A. No.
- 12 Q. Changing topics a little bit here, are you
- 13 aware --
- 14 (Off the record.)
- 15 Q. (BY MR. AIGEN) Are you aware that a few of
- 16 the loans at issue here, specifically related to HCMS
- 17 and HCRE, were term loans as opposed to demand loans?
- 18 A. Yes.
- 19 Q. And are you aware that for those particular
- 20 loans, there were payments that were supposed to be
- 21 made but weren't on December 31, 2020?
- 22 A. Yes.
- Q. Do you have any understanding as to why those
- 24 payments weren't made with respect to the HCMS and HCRE
- 25 term loans on December 31, 2020?

- 1 that does not include HCMS and HCRE; is that correct?
- 2 A. When I say Advisors, I am referring to HCMFA
- 3 and NPA.
- Q. And when you use the term "affiliates,"
- 5 you're referring to all four; is that correct?
- A. Correct.
- 7 Q. Just want to make sure we're on the same
- 8 page.
- 9 When you answered the previous question you
- 10 started to get into assumptions and things like that.
- 11 Let me start off with what your specific recollection
- 12 of that phone call was. Tell me as best as you can
- 13 what you remember Frank telling you?
- 14 A. I remember it as being no payments from the
- 15 Advisors to the debtor.
- 16 Q. So you don't remember the instruction being,
- 17 don't make payments from the affiliates. It was, don't
- 18 make payments from the Advisors; is that correct?
- 19 A. Correct.
- Q. So is it fair to say that you don't remember
- 21 any instructions telling you not to make any payments
- 22 from HCMS or HCRE?
- 23 A. That's fair.
- Q. So if that is the case, why weren't payments
- 25 made from HCMS or HCRE for December 31, 2020, payment?

26 (Pages 101 to 104)

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- 1 A. Sure. Typically what would have happened is
- 2 Frank would be talking to Jim Dondero about making
- 3 these payments and getting his approval to do so,
- 4 because Jim Dondero is, you know, directing payments
- 5 out of these entities.
- I have never -- had never been given the
- 7 direction to effectuate those payments by anybody.
- Q. Is it fair to say, then, that you're not
- 9 aware of any instructions from anyone saying that the
- 10 HCMS and HCRE payments should not be made on
- 11 December 31, 2020?
- 12 A. That's fair.
- 13 Q. So the reason the payments weren't made is
- 14 because you never got an affirmative instruction to
- 15 actually make that payment; is that correct?
- 16 A. Correct.
- 17 Q. And you're not aware of Mr. Dondero
- 18 instructing anyone that HCMS and HCRE should not have
- 19 made the December 31, 2020, payments; is that correct?
- 20 A. I'm not aware personally, no. Correct.
- 21 Q. You say personally. In any way are you aware
- 22 of such a specific instruction?
- 23 A. No.
- 24 Q. If that payment was to be made, who at the
- 25 debtor would have been responsible for making those

- 1 Q. And is that because it's only your job to
- 2 make payments that you're told to specifically make; is
- 3 that correct?
 - A. Yes, in this case, that is correct.
 - 5 Q. Is it fair to say then that as part of your
- 6 job responsibilities you've never made a payment to
- 7 anyone without being specifically told by Mr. Dondero
- 8 and Mr. Waterhouse?
- 9 A. Sorry, say that again.
- 10 Q. As part of your job responsibilities, have
- 11 you ever made a payment to anyone without the specific
- 12 instruction of Mr. Waterhouse or Mr. Dondero?
- 13 MR. MORRIS: Objection to the form of the
- 14 question.
- 15 THE WITNESS: Yes, we make payments all the
- 16 time.
- 17 Q. (BY MR. AIGEN) So why is this different in
- 18 that this payment was not made without the specific
- 19 instructions from Mr. Waterhouse and Mr. Dondero, even
- 20 though you believed the payment was due on December 31,
- 21 2020?
- 22 A. The difference between making a loan payment
- 23 and making normal course -- or sorry, normal, ordinary
- 24 course, you know, overhead expense payments is that
- 25 something like that is not necessarily what we would

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1 payments on behalf of HCMS and HCRE?

- MR. MORRIS: Objection to the form of the
- 3 question.
- 4 THE WITNESS: The corporate accounting team.
- 5 Q. (BY MR. AIGEN) And that included you?
- 6 A. Yes
- ${\bf 7} \qquad {\bf Q.} \ \ {\bf And in \, December \, of \, 2020, \, were \, you \, aware \, that}$
- 8 those payments were due on December 31, 2020?
- 9 A. Yes.
- 10 Q. Did you make any attempts or efforts to
- 11 determine whether Mr. Dondero wanted those payments to
- 12 be made?
- 13 A. I did not, no.
- 14 Q. Why not?
- 15 A. That would have been something that Frank
- 16 Waterhouse would have done directly with Jim Dondero
- 17 himself.
- 18 Q. Did you have any conversations with anyone
- 19 about whether the December 31 payments for HCMS and
- 20 HCRE would be made in December of 2020?
- 21 A. Not that I can recall.
- Q. And you didn't think it was your
- 23 responsibility to check on those payments and find out
- 24 if they should have been made?
- 25 A. Right, correct.

1 take to Jim Dondero to approve.

- 2 He doesn't have time to approve every single
- 3 overhead payment that we're making out of every single
- 4 entity. That's what Frank is for.
- 5 Something that's once a year that's more
- 6 material in amount, such as a loan payment, that is
- 7 something that needs to get approved by Jim Dondero.
- 8 Q. You say needs to get approved. What's your
- 9 basis for that, something in a policy manual, something 10 someone told you?
- 11 A. It's a policy that my team followed. I don't
- 12 think that it's written in an actual manual anywhere,
- 13 but anything that's not ordinary course needs to get
- 14 approved by Jim Dondero.
- 15 Q. Is that something that's written in a policy 16 anywhere?
- 17 A. Not that I know of.
- 18 Q. Were you ever told that payments in the
- 19 ordinary course can be made without Mr. Dondero's
- 20 approval but loan payments cannot?
- 21 A. Yes, I do recall years ago that Frank and I,
- 22 possibly Jim, this was years ago, had a conversation
- 23 that anything ordinary course is up to Frank to
- 24 approve. And this is, quite frankly, up to Frank.
- 25 Whatever he felt Jim needed to sign off on,

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- 1 that's what Jim would sign off on. This was not my
- 2 responsibility to make that decision.
- 3 Q. And in December -- prior to the December 31,
- 4 2020, due date you didn't have any conversations with
- 5 anyone about whether this -- these payments that were
- 6 due should be made; is that correct?
- 7 A. Correct.
- 8 Q. And you didn't try to check with anyone to
- 9 see whether anyone wanted these payments to be made; is
- 10 that correct?
- 11 A. Correct.
- 12 Q. Subsequent to the payment being missed, did
- 13 you ever have any conversations with anyone about why
- 14 the payment was not made?
- 15 A. Not that I recall.
- 16 Q. So is it fair to say that sitting here today
- 17 you have no idea why the payments were not made for
- 18 HCMS and HCRE on December 31, 2020?
- 19 MR. MORRIS: Objection to the form of the 20 question.
- 21 THE WITNESS: I don't have any specific
- 22 evidence telling me why they weren't. I can make
- 23 assumptions but that's not going to help.
- Q. (BY MR. AIGEN) Well, did you ever have any
- 25 conversations with anyone about why those payments were

- 1 A. I can't tell you the exact date, but, yes, I
- 2 do have a recollection of Frank calling or emailing me
- 3 to have, I believe it was the HCRE wire sent out for
- 4 their payment.
- 5 Q. What about the HCMS payment?
- 6 A. I don't recall that one as much.
- 7 Q. Other than the payment being made, do you
- 8 have any recollection of any other conversations about
- 9 why the payment was being made?
- 10 A. No.
- 11 Q. Are you aware of any conversations that
- 12 anyone had regarding whether these payments would
- 13 deaccelerate loans?
- 14 A. No.
- 15 Q. Is that something you would normally be part
- 16 of, conversations like that?
- 17 A. No.
- 18 Q. Changing topics here. Not sure if this is an
- 19 area that you know anything about.
- 20 Are you familiar with the term, as it's used
- 21 at Highland, NAV ratio trigger period?
- 22 A. No.
- 23 Q. This may go very quick. If I represent to
- 24 you that it's a term that's used in the -- in the
- 25 fourth amended limited partnership agreement for

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- 1 not made?
- A. No.Q. You have no idea why they weren't made other
- 4 than just speculation; is that fair to say?
- 5 A. Correct.
- 6 MR. MORRIS: Objection. Asked and answered.
- 7 THE WITNESS: Correct.
- 8 Q. (BY MR. AIGEN) And are you aware that with
- 9 respect to those two loans, some payments were actually
- 10 made in the next month, in January of 2021?
- 11 A. Yes.
- 12 Q. What role, if any, did you have with respect
- 13 to those payments?
- 14 A. Frank Waterhouse would call me and tell me to
- 15 have my team effectuate a wire.
- 16 Q. And you say would call you. Do you remember
- 17 this conversation or are you just assuming it occurred?
- **MR. MORRIS:** Objection to the form of the
- 19 question.
- THE WITNESS: If we sent a payment out, Frank
- 21 would have told me to do it. I would not have done it
- 22 on my own.
- Q. (BY MR. AIGEN) Sitting here today, do you
- 24 have a specific recollection of the conversation where
- 25 someone told you to make the January 2021 payments?

- 1 Highland Capital Management, would that refresh your
- 2 recollection at all?
- 3 A. No.
- Q. Fair to say, then, that you have no knowledge
- 5 as to whether NAV ratio trigger period was ever reached
- 6 at any time prior to bankruptcy buyouts?
 - A. No, I don't know.
- 8 Q. Have you ever had any conversations with
- 9 Nancy Dondero?
- 10 A. I have not.
 - Q. Never met her?
- 12 A. No. I may have exchanged an email with her
- 13 on an invoice, but that's the extent of it. No
- 14 conversations.

11

- 15 Q. In the years leading up to the bankruptcy of
- 16 Highland Capital, was there any time period where
- 17 Highland was unable to pay its salaries?
- 18 A. Salaries?
- 19 Q. Salaries of its employees?
- 20 A. No.
- Q. In the time leading up to the Highland
- 22 bankruptcy, was there any time period where Highland
- 23 wasn't able to pay bonuses owed to any of its
- 24 employees?
- 25 A. Not that I know of. Not that I can recall.

28 (Pages 109 to 112)

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- 1 Q. Are you aware of any time period leading up
- 2 to the Highland bankruptcy where Highland was unable to
- 3 pay its bills?
- 4 A. There's times where we would be in a cash
- 5 flow crunch and we would stretch our AP, but eventually
- 6 it would get paid.
- 7 Q. And I think this is the last topic and we can
- 8 probably move through this pretty quickly.
- 9 Are you aware of any loans made by Highland
- 10 to any of its employees or officers that were forgiven
- 11 in part or all?
- 12 A. Yes.
- 13 Q. Which officers or employees are you aware of?
- 14 A. I recall there were two employees. I can't
- 15 remember one of them, but I believe another, the second
- 16 one, was Paul Adkins. Again, I'm just recalling this
- 17 was years ago.
- 18 Q. And these two are the only ones you're aware
- 19 of?
- 20 A. Or I'm sorry, not Paul Adkins, Tim Lawler.
- 21 It's possible Paul Adkins was the other one, but I
- 22 can't tell you for sure.
- 23 Q. Tim Lawler and some other employee that you
- 24 can't remember the name of are the only two that you're
- 25 aware of?

- 1 behalf of HCMFA in May of 2019 to bind HCMFA to such
- 2 notes?
- 3 A. No.
- 4 Q. Thank you, ma'am.
 - EXAMINATION
- 6 Q. (BY MR. MORRIS) Ms. Hendrix, can you get out
- 7 of your pile, Exhibit Number 3.
- And this is the email from Dave Klos to
- 9 corporate accounting on May 2nd concerning the
- 10 \$2.4 million that was going to be transferred from
- 11 HCMLP to HCMFA?
- 12 A. Yes.
- 13 O. And how did Mr. Klos characterize that
- 14 transfer?
- 15 A. He called it a new intercompany loan.
- 16 Q. What does a new intercompany loan mean to
- 17 you?
- 18 A. That means we are creating a new loan
- 19 document, sending money out, tracking it as a
- 20 brand-new, fresh loan.
- 21 Q. And he sent this email to an email group
- 22 called corporateaccounting@hcmlp.com. Do I have that
- 23 right?
- 24 A. Yes.
- 25 Q. Were you included in that email group?

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- 1 A. Yes.
- 2 Q. This other employee, I know you don't
- 3 remember the name. Is there any other description that
- 4 you can give me, what their position was, how long they
- 5 worked, or is it just you remember those loans?
- 6 A. I just remember we had two employee loans.
- 7 Q. Approximately when was this?
- 8 A. I couldn't even tell you. All the years just
- 9 commingle together.
- 10 Q. More than five years ago?
- 11 A. Yes.
- 12 Q. More than 10 years ago?
- 13 A. I couldn't say.
- 14 MR. AIGEN: Why don't we take a five-minute
- 15 break and then I'll either be done or have just a few
- 16 wrap-up questions.
- 17 MR. RUKAVINA: Okay.
- (Off the record.)
- 19 FURTHER EXAMINATION
- 20 Q. (BY MR. RUKAVINA) Ms. Hendrix, in May of
- 21 2019, would you on behalf of Highland alone,
- 22 unilaterally, have the authority to lend to HCMFA 2.4-
- 23 and/or \$5.0 million?
- 24 A. No.
- Q. And would you have had any authority on

- 1 A. I was.
- 2 Q. Can you identify everybody else who you
- 3 recall being in that email group?
- A. Yes.
- 5 Q. Who else was in that email group?
- 6 A. Dave Klos, Frank Waterhouse, myself, Hayley
- 7 Eliason, and Blair Roeber.
- 8 Q. Okay. Did Mr. Waterhouse ever tell anybody,
- 9 to the best of your knowledge, in May 2019 that the
- 10 transaction should not be booked as a loan?
- 11 A. No, not to my knowledge.
- 12 Q. You testified earlier that there was, you
- 13 recall, a similar email the next day with respect to a
- 14 \$5 million transaction.
- 15 Do you recall that?
- 16 A. Yes.
- 17 Q. Do you recall if that email also went to
- 18 corporate accounting?
- 19 A. I believe so, yes.
- 20 Q. And to the best of your knowledge, would
- 21 Mr. Waterhouse have been informed on May 3, 2019, that
- 22 the transaction was being booked by the corporate
- 23 accounting department as a loan?
- 24 A. Yes.
- 25 Q. Did Mr. Waterhouse tell you at that time or

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1 at any time thereafter that it was a mistake to book it
2 as a loan?

1 H
2 te

3 A. No.

4 Q. Did Mr. Waterhouse tell you at that time or

5 at any time thereafter that he didn't intend to sign

6 the promissory notes?

7 A. No.

8 MR. RUKAVINA: Objection. To the last

9 question, objection to form.

10 Go ahead.

11 Q. (BY MR. MORRIS) Okay. The promissory notes,

12 to be clear, are the two promissory notes that you

13 testified to earlier that have been marked as exhibits

14 in this deposition for \$5 million and \$2.4 million

15 respectively.

16 With that definition as promissory notes, did

17 Mr. Waterhouse ever tell you at any time that it was a

18 mistake to sign those notes?

MR. RUKAVINA: I'll object to the form.

Go ahead.

21 THE WITNESS: No.

Q. (BY MR. MORRIS) Did Mr. Waterhouse or

23 anybody -- withdrawn. I'll go back to the first

24 question.

19

25 Did Mr. Waterhouse or anybody in the world

1 HCMFA. I oversaw all other aspects of the audit my

2 team carried out.

3 Any requests from the auditors, emails with

4 questions, any issues that arose, all of that went

5 through me.

Q. And did Mr. Waterhouse play a role in

7 relation to the annual audit?

A. Yes.

9 Q. What is your understanding of

10 Mr. Waterhouse's role?

11 A. Let's see. He was in charge of reviewing the

12 financial statements as they were done, so he saw the

13 end product. He would sign off on the management rep

14 letter. He signed engagement letters.

15 If there were any big issues, those got --

16 those would be brought to Frank's attention for sure.

Q. Okay. And are you a CPA?

18 A. Yes.

19 Q. And are you familiar with management rep

20 letters?

17

21 A. Yes.

22 Q. What is your understanding of what a

23 management rep letter is?

A. That's basically telling the auditors that

25 everything in the audited financial report is accurate

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1 ever tell you at any time since May of 2019 that it was

2 a mistake to issue the promissory notes as we've

3 defined them?

4 A. No.

5 Q. Did Mr. Waterhouse or anybody in the world

6 tell you that Mr. Waterhouse wasn't authorized to affix

7 his signature to those promissory notes?

8 MR. RUKAVINA: And I'll object. Assumes

9 facts not in evidence, i.e., the signature. That's

10 what I've been objecting to.

11 But go ahead and answer.

12 THE WITNESS: Say it again.

13 Q. (BY MR. MORRIS) Did Mr. Waterhouse or

14 anybody in the world tell you at any time that he

15 wasn't authorized to have his signature affixed to the

16 promissory notes?

17 MR. RUKAVINA: Same objection.

18 THE WITNESS: No.

19 Q. (BY MR. MORRIS) Did you have anything to do

20 with Highland's annual audit?

21 A. Yes.

Q. What role did you play with respect to

23 Highland's annual audit?

A. I personally was in charge of completely

25 writing the entire audit report for the debtor and for

1 to the best of their knowledge, they've presented

2 everything that they have fair and accurately, they're

3 not withholding any information.

Q. And do you recall that the -- Highland's 2018

5 audit was completed in early June 2019?

A. Yes.

7 Q. And did you cause the two promissory notes

8 that we're talking about here to be delivered to

9 PricewaterhouseCoopers in connection with the audit?

10 A. Yes.

11 O. And were those two promissory notes delivered

12 to PricewaterhouseCoopers because they constituted

13 subsequent events?

14 A. Yes.

15 Q. Do you recall whether those promissory notes

16 were described in Highland's 2018 audited financial

17 statements?

18 A. Yes.

19 Q. And did Mr. Waterhouse or Mr. Dondero ever

tell you at any time that there was a mistake in the

21 audited financial statements?

22 A. No.

Q. Did they ever tell you -- did Mr. Waterhouse

 $24\,\,$ or Mr. Dondero or anybody in the world ever tell you at

25 any time that the two notes were mischaracterized in

30 (Pages 117 to 120)

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117 1 the 2018 audited financial statements of Highland 1 reference to these notes in HCMFA's 2018 audited 2 Capital? financial statements? A. No. 3 MR. RUKAVINA: Same objection. 3 O. Do vou know whether HCMFA also had its annual 4 THE WITNESS: No. Q. (BY MR. MORRIS) Okay. Do you recall, did 5 financial statements audited by PricewaterhouseCoopers? 5 6 anybody in the world ever tell you that the 7 Q. Did you play any role in connection with that transactions described in Exhibit 3 and the other 8 audit? 9 as a loan? A. Yes. 10 Q. What role did you play in connection with 10 A. No.

- 11 HCMFA's audit of the 2018 financial statements?
- A. Same exact role as with the debtors --
- 13 O. And --
- 14 A. -- writing the audit report, overseeing all
- 15 other audit functions.
- Q. And did you and your group cause HCMFA to 16
- 17 deliver to PricewaterhouseCoopers the two promissory
- 18 notes that we've been discussing from May 2019?
- 19 A. Yes.
- 20 Q. Did Mr. Waterhouse or Mr. Dondero or anybody
- 21 in the world ever tell you that it was a mistake to
- 22 deliver those promissory notes to PwC in connection
- with HCMFA's 2018 audit?
- 24 A. No.
- 25 O. Were those notes delivered -- withdrawn.

- 8 document that you recall should never have been booked
- 11 Q. Did anybody in the world tell you that you
- 12 made a mistake when you created those promissory notes?
- 13 A. No.
- 14 Q. Can you pull out what was marked as
- 15 Exhibit 16.
- Do you understand that the Advisors provide 16
- 17 services to certain retail funds?
- 18 A. Yes.
- 19 Q. And do you recall that the services are
- 20 subject to an agreement that's subject to annual
- 21 review?
- 22 A. Yes.
- 23 Q. So looking at Exhibit 16, did you understand
- 24 that the retail board had asked Highland to disclose --
- 25 I'll just read it from the document on page 2,

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Were those notes delivered to

- 2 PricewaterhouseCoopers because they constituted
- 3 subsequent events in connection with the 2018 audit?
- 4 A. Yes.
- 5 Q. Do you recall whether PricewaterhouseCoopers
- 6 included as a liability on HCMFA's balance sheet the
- 7 obligations reflected in the two promissory notes at
- 8 issue?
- MR. RUKAVINA: Objection. Best evidence. 9
- 10
- 11 THE WITNESS: On the 2018 financials?
- 12 O. (BY MR. MORRIS) Correct.
- 13 A. Those would not have been included as
- 14 liabilities in the 2018 financials.
- 15 Q. Do you know if HCMFA completed their audit
- 16 for 2019?
- 17
- 18 Q. Okay. Did the notes appear in HCMFA's 2018
- 19 audited financials under the subsequent events section?
- 20
- 21 MR. RUKAVINA: Objection. Best evidence.
- 22 Go ahead.
- O. (BY MR. MORRIS) Did Mr. Dondero or -- did
- 24 Mr. Waterhouse or Mr. Dondero or anybody in the world
- 25 ever tell you that it was a mistake to include

- 1 Bates number ending 881.
- There's an email from Ms. Thedford that says,
- 3 quote, are there any material amounts -- withdrawn.
- Are there any material outstanding amounts
- 5 currently payable or due in the future, open paren,
- 6 e.g., notes, close paren, to HCMLP by HCMFA or NexPoint
- 7 Advisors or any other affiliate that provides services
- 8 to the funds?
- 9 Do you see that?
- 10 A. Yes.
- 11 Q. And were you generally aware that that was
- 12 part of the annual renewal process?
- 13 A. Yes.
- Q. And you made some comments earlier about
- 15 Ms. Thedford's response on the first page.
- 16 Do you recall that?
- 17
- 18 Q. And you actually were able to correct certain
- 19 mistakes that you perceived in her response.
- 20 Do I have that right?
- 21 A. Correct.
- 22 Q. Do you know -- do you see where it says,
- 23 HCMFA due to HCMLP as of June 30, 2020, let's just call
- 24 it \$12.3 million.
- 25 Do you see that?

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1 A. Yes.

- 2 Q. And above that there is a reference to the
- 3 6/30 financials.
- 4 Do you see that?
- 5 A. I do.
- 6 Q. Do you know what the reference to the 6/30
- 7 financials is?
- 8 A. Yes.
- 9 Q. And what is that reference?
- 10 A. That is referencing the amounts on the
- 11 balance sheet at 6/30 that we provided for the 15(c)
- 12 materials to the board.
- 13 Q. Okay. And does that \$12.3 million include,
- 14 to the best of your knowledge, the principal amount of
- 15 the two notes that we were talking about?
- 16 A. Yes.
- 17 MR. RUKAVINA: Objection. Best evidence.
- 18 THE WITNESS: Yes.
- 19 Q. (BY MR. MORRIS) And how do you know that?
- 20 A. Because I kept their financials, I know for a
- 21 fact that it included all of their outstanding notes
- 22 and it most certainly included these two notes that
- 23 we've been talking about today.
- Q. And to the best of your recollection did
- 25 HCMFA provide the 6/30 financials to the retail board?

- 1 was given to the retail board?
- 2 A. I likely did. I can't tell you for certain
- 3 that I was on the correspondence.
- 4 Q. Do you recall any discussion at any time that
- 5 the \$12.3 million number in Ms. Thedford's email should
- 6 be changed in the final report to the retail board?
- A. I don't believe so.
- 8 Q. Did anybody ever tell you at any time that
- 9 the \$12.3 million number was incorrect?
- 0 A. No
- 11 Q. Did anybody ever tell you at any time that
- 12 that number wrongly included the \$7.4 million reflected
- 13 in the two notes?
- 14 A. No.
- 15 Q. Okay. Do you recall that earlier that
- 16 summer -- we looked at Exhibit 15?
- 17 A. Yep.
- 18 Q. And that was an attachment to an email that
- 19 you personally sent to Mr. Dondero. We saw that
- 20 before?
- 21 A. Right.
- Q. And this Exhibit 15, which was attached to
- 23 your email, identifies amounts due and owing from
- 24 NexPoint Advisors; right?
- 25 A. Right.

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- 1 A. Yes.
- Q. And to the best of your knowledge did
- 3 Mr. Dondero or Mr. Waterhouse or anybody in the world
- 4 ever tell you that the financial statements that were
- 5 provided to the retail board were erroneous in any way?
- 6 A. No
- 7 Q. Did Mr. Dondero or Mr. Waterhouse or anybody
- 8 in the world ever tell you that the 6/30 financials
- 9 that were given to the retail board should not have
- 10 $\,$ included the \$7.4 million principal amount on the two
- 11 promissory notes?
- 12 MR. RUKAVINA: Objection. Best evidence.
- 13 Answer.
- 14 THE WITNESS: No.
- 15 Q. (BY MR. MORRIS) Do you know whether -- are
- 16 you at all familiar with the Advisors' actual response
- 17 to the retail board in October 2020?
- 18 A. Say that again, please.
- 19 Q. So this email string is October 2020; right?
- 20 A. Right.
- 21 Q. And do you understand that this is kind of a
- 22 discussion between Mr. Waterhouse and Ms. Thedford as
- 23 to how to respond?
- 24 A. Yes.
- Q. Have you ever seen the actual response that

- 1 Q. And it identifies amounts due and owing for a
- 2 number of different entities, including HCMFA; right?
- 3 A. Correct.
- 4 Q. Do you know whether the amount included for
- 5 HCMFA on Exhibit 15 included the principal amount due
- 6 on the two promissory notes?
- 7 A. It does.
- 8 Q. Did Mr. Dondero or Mr. Waterhouse ever ask
- 9 you why -- withdrawn.
- 10 Did Mr. Dondero or Mr. Waterhouse ever ask
- 11 you how the \$10.5 million number was calculated?
- 12 A. No.
- 13 O. Did Mr. Dondero or Mr. Waterhouse ever
- 14 suggest to you that the number was incorrect?
- 15 A. No.
- 16 Q. Did Mr. Dondero or Mr. Waterhouse or anybody
- 17 in the world ever question the number that you gave to
- 18 Mr. Dondero in the summer of 2020 concerning the
- 19 principal amount due by HCMFA to HCMLP?
- 20 A. No.
- 21 Q. Have you ever made a payment -- withdrawn.
- 22 Have you ever caused a payment to be made in
- 23 connection with an intercompany loan without receiving
- 24 the prior approval from either Frank Waterhouse or
- 25 Mr. Dondero?

32 (Pages 125 to 128)

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Kristin Hendrix - October 27, 2021

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- 1 A. No.
- Q. Has anybody ever said to you that you made a
- 3 mistake in applying a payment against principal or
- 4 interest due on an intercompany loan?
- A. No.
- 6 Q. We saw this morning, and we produced to
- 7 Mr. Rukavina and he mentioned earlier, 13-week
- 8 forecasts? Do you understand that?
- 10 Q. Did you review the 13-week forecasts
- 11 recently?
- A. Yes.
- 13 Q. And we're talking specifically about the
- 14 13-week forecasts for the November/December 2020 time
- 15 period. Do you understand that?
- 16 A. Yes.
- 17 Q. Based on your review of those forecasts, did
- 18 those forecasts specifically identify the principal and
- 19 interest that were due on the three term notes as of
- 20 December 28, 2020?
- 21 A. Yes.
- 22 Q. And what was the purpose of creating the
- 23 13-week forecasts?
- 24 A. Sure. That was to keep everybody informed
- 25 who was on the cash call, Frank Waterhouse, Jim Seery

- 1 A. Yes.
- Q. And was that information that was included on
- 3 the reports to Mr. Waterhouse?
- A. Yes.
- Q. And do you recall whether there were any
- 6 specific discussions in November or December of 2020
- concerning those payments -- withdrawn. That wasn't a
- good question.
- Did Mr. Waterhouse or -- withdrawn.
 - Did anybody on behalf of HCMS or HCRE ever
- 11 instruct you to make the payments that were due under
- 12 their term notes?
- 13 A. No.

10

- 14 Q. Did anybody on behalf of NexPoint ever
- 15 instruct you to make a payment that was due at year end
- 16 with respect to the NexPoint term note?
- 17 A. No.
- Q. Were you authorized to make those payments 18
- without the prior approval of either Mr. Waterhouse or
- 20 Mr. Dondero?
- 21 A. No.
- Q. I think you testified that there were certain
- 23 payments that were made in January 2001 under each of
- 24 the three term notes.
- 25 Do I have that right?

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- 1 A. Correct.
 - MR. RUKAVINA: 2021. 2
 - 3 MR. MORRIS: Thank you very much.
 - 4 Q. (BY MR. MORRIS) With that amendment, do you
 - 5 understand my question?
 - A. Yes.
 - 7 Q. Do you know why the three payments were made
 - 8 in January of 2021 on each of three term notes?
 - A. Because Frank Waterhouse instructed me to do
 - 10 so.
 - 11 Q. And he had not instructed you to make those
 - 12 payments prior to that time?
 - 13 A. Correct.
 - Q. Did you have to prompt Frank Waterhouse in
 - 15 January of 2021 to make those payments?
 - 16 A. No.
 - 17 Q. So based on the 13-week forecast that you
 - 18 prepared and delivered to Mr. Waterhouse, is it your
 - 19 understanding that Mr. Waterhouse knew as early as mid
 - 20 November 2020 that payments would be due under the
 - 21 three term notes at the end of the year?
 - 22 A. Yes.
 - 23 Q. And, in fact, did HCMS and HCRE and NexPoint
 - 24 timely make their installment payments that were due at
 - 25 year end 2018?

1 and others, keep everybody informed of upcoming

payments that were due on term loans well in advance.

- 3 Everybody knew about it. It was out there
- 4 for everybody to see that was on these cash calls.
- Q. Now, is it your understanding that
- 6 Mr. Waterhouse -- withdrawn.
- 7 Did you email these forecasts -- withdrawn.
- 8 Did anybody email these forecasts to the best
- of your recollection in late 2020?
- 10 A. Yes.
- 11 Q. And was it sent to the corporate accounting
- 12 group that we saw earlier?
- guys that were involved with the cash call.

A. It was probably sent to Frank, Seery, the DSI

- Q. Okay. And so did you participate in the
- 16 creation of the 13-week forecasts?
- 17
- 18 Q. What role did you play in the creation of the
- 19 13-week forecasts?
- 20 A. I was responsible for creating the entire
- 21 thing.
- 22 Q. Okay. And based on the work that you did,
- 23 was one of the purposes to make sure that
- 24 Mr. Waterhouse was aware of all payments that were
- 25 coming due under the intercompany notes?

33 (Pages 129 to 132)

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Kristin Hendrix - October 27, 2021

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- 1 A. Yes.
- 2 Q. And was that done because HCMLP received the
- 3 instructions of somebody authorized to give the
- 4 instruction on behalf of those entities?
- A. Yes.
- 6 Q. Did HCMS and HCRE and NexPoint timely make
- 7 the installment payments that were due at year end
- 8 2019?
- A. Yes.
- 10 Q. And why did they make those payments?
- 11 A. Because we were provided instruction and
- 12 authorization to do so.
- 13 Q. Okay. And is the only reason that the
- 14 payment wasn't made at year end 2020 because nobody on
- 15 behalf of the Advisors -- withdrawn.
- 16 Is the only reason that no payment was made
- 17 at the end of 2020 is because no one on behalf of
- 18 NexPoint, HCRE, or HCMS directed HCMLP to make those
- 19 payments?
- 20 A. Correct.
- 21 MR. AIGEN: Objection. Form.
- 22 Q. (BY MR. MORRIS) And you testified earlier to
- 23 a call that you had with Mr. Waterhouse. I think you
- 24 said it was either November 30 or December 1.
- Do you recall that?

- 1 any reason they weren't, then they were going to raise
- 2 an issue, a going concern issue.
- 3 That came up several years in a row with
- 4 HCMFA.
- 5 Q. Do you recall that the three term notes at
- 6 issue here were all signed on May 31, 2017?
- A. Yes.
- 8 Q. And all of those term notes involved a
- 9 roll-up of previously issued demand notes; is that
- 10 right?
- 11 A. Correct.
- 12 Q. Do you know why in -- at the end of May 2017
- 13 NexPoint, HCRE, and HCMS rolled up their demand notes
- 14 into individualized term notes?
- 15 A. Yes.
- 16 Q. What is your understanding as to why that
- 17 happened?
- 18 A. That would get the auditors a little bit more
- 19 comfort over our outstanding loans, ensuring that we
- 20 have an amortization schedule, an underlying contract,
- 21 showing that payments will be coming in every year on
- 22 these outstanding receivables.
- 23 Q. Okay. As the person responsible for
- 24 preparing Highland's audit, did anybody ever tell you
- 25 at any time that any of the notes were not valid

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- 2 Q. And did you personally continue to prepare
- 3 the 13-week forecasts after your conversation with
- 4 Mr. Waterhouse?
- 5 A. Yes.

1

- 6 Q. And did those 13-week forecasts continue to
- 7 $\,$ include the payments that were due under the three term
- 8 notes at the year end?
- 9 A. Yes.
- 10 Q. And that's information that you gave to
- 11 Mr. Waterhouse; is that right?
- 12 A. Right.
- 13 Q. Mr. Rukavina elicited from you the fact that
- 14 payments of principal hadn't been made on demand notes
- 15 that were executed in favor of Mr. Dondero's
- 16 affiliates.
- 17 Do you recall that?
- 18 A. Yes.
- 19 Q. Okay. Was that a topic of conversation with
- 20 PricewaterhouseCoopers at any time?
- 21 A. Yes.
- Q. Can you tell me about that conversation?
- 23 A. Sure. As part of our annual audit, the
- 24 auditors would, you know, make sure that our
- 25 receivables are collectible. And if they thought for

- 1 obligations of the maker?
- 2 A. No.
- 3 Q. As the person responsible for Highland's
- 4 audit, did anybody ever tell you at any time that any
- 5 of the notes at issue should not have been signed?
 - A No
- 7 Q. As the person responsible for Highland's
- 8 audit, did anybody ever tell you at any time that any
- 9 of the notes at issue were signed by mistake?
- 10 A. No.
- 11 Q. Did anybody ever tell you at any time that --
- 12 withdrawn.
- 13 As the person responsible for Highland's
- 14 audit, did anybody ever tell you at any time that
- 15 Mr. Dondero didn't approve of any of the notes?
- 16 A. No.
- ${f Q.}$ As the person responsible for Highland's
- 18 audit, did anybody ever tell you at any time that
- 19 the -- any of the notes at issue were subject to an
- 20 oral agreement?
- 21 A. No.
- Q. As the person responsible for Highland's
- 23 audit, did anybody ever tell you at any time that any
- 24 of the notes were amended?
- 25 A. No.

34 (Pages 133 to 136)

Kristin Hendrix - October 27, 2021

	133		135
1	Q. As the person responsible for Highland's	1	CERTIFICATE OF REPORTER
2	audit, did anybody ever tell you at any time that any	2	I, BRANDON D. COMBS, a Certified Shorthand
3	of the notes would be forgiven?	3	Reporter, hereby certify that the witness in the
4	A. No.	4	foregoing deposition was by me duly sworn to tell the
5	Q. During your 15 years at Highland, has an	5	truth, the whole truth, and nothing but the truth in the
6	intercompany loan ever been forgiven in whole or in	6	within-entitled cause;
7	part?	7	That said deposition was taken in shorthand by
8	A. No.	8	me, a disinterested person, at the time and place
9	Q. During your withdrawn.	9	therein stated, and that the testimony of the said
10	Can you recall any note that Highland ever	10	witness was thereafter reduced to typewriting, by
	held as the payee that was forgiven in whole or in part		computer, under my direction and supervision;
	in the five years prior to bankruptcy, go back to 2014?	12	That before completion of the deposition,
13	A. No.		review of the transcript was not requested. If
14	Q. Is it your understanding as the person	14	requested, any changes made by the deponent (and
15	responsible for Highland's audit that the forgiveness	15	provided to the reporter) during the period allowed are
16	of notes, if they were in a material amount, would have	16	appended hereto.
17	had to have been disclosed in the audited financial	17	I further certify that I am not of counsel or
18	statements?	18	attorney for either or any of the parties to the said
19	A. Yes.	19	deposition, nor in any way interested in the event of
20	Q. So is it fair to say that any evidence of the	20	this cause, and that I am not related to any of the
	forgiveness of material amounts would have been	21	parties thereto.
22	disclosed in Highland's financial statements?	22	DATED: November 1, 2021
23	A. Yes.	23	DATED: November 1, 2021
24	MR. MORRIS: I have no further questions.	24	
25	MR. RUKAVINA: I have none.	25	Brandon Combs, Certified Shorthand
25	WIR. RUKAVIIVA, Thave holic.	25	Brandon Comos, Certified Shorthand
	134		136
1	MR. AIGEN: None.	1	State of Texas
2	MR. RUKAVINA: Okay. Thank you very much.		Dickman Davenport, Inc. Cert 312
3	(Whereupon, the deposition adjourned at	2	4228 North Central Expressway
4	1:19 P.M.)		Suite 101, Dallas, TX 75206
5	oOo	3	(214) 855-5100 (800) 445-9548
6	I declare under penalty of perjury that the	4	Email: info@dickmandavenport.com www.dickmandavenport.com
7	foregoing is true and correct. Subscribed at	•	My commission expires 1-31-23
8	, Texas, this day of	5	Trif commission expires 1 31 23
9	, 2021.	6	
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	KRISTIN HENDRIX	11	
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9	vs.) No. 21-03004-sgj	10	(No exhibits marked.)	
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ŀ	DAVID KLOS		16		
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	P.M. to 5:14 P.M., before				
TIOM D.SO	I.M. CO S.II I.M., DCIO	re blumbon b. combb,	23		
GSR. RPR.	in and for the State of	Texas, reported by			
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4 computeriz 5 Street, 38	in and for the State of ed machine shorthand, a th Floor, Dallas, Texas	t 500 North Akard			4
4 computeriz 5 Street, 38	ed machine shorthand, a	t 500 North Akard	24	DAVID KLOS, having been first duly swom, testified as follows	•
computeriz Street, 38	ed machine shorthand, a th Floor, Dallas, Texas	t 500 North Akard	24 25	*	·
d computeriz	ed machine shorthand, a th Floor, Dallas, Texas APPEARANCES	2 R, PC, 500 North	24 25 1 2	having been first duly sworn, testified as follows	s:
computeriz Street, 38	ed machine shorthand, a th Floor, Dallas, Texas APPEARANCES	2 R, PC, 500 North 75201, represented	24 25 1 2 3	having been first duly swom, testified as follows EXAMINATION Q. (BY MR. RUKAVINA) Sir, state your	s:
Street, 38 MAKARD Street	ed machine shorthand, a th Floor, Dallas, Texas APPEARANCES HUNSCH, HARDT, KOPF & HARD et, Suite 3800, Dallas, To	2 R, PC, 500 North K 75201, represented appeared via	24 25 1 2 3 4	having been first duly sworn, testified as follows EXAMINATION	s:
Street, 38 M Akard Stree by DAVOR RU	ed machine shorthand, a th Floor, Dallas, Texas APPEARANCES UNSCH, HARDT, KOPF & HARI et, Suite 3800, Dallas, Tr KAVINA, Attorney at Law,	2 R, PC, 500 North K 75201, represented appeared via E of the Defendants.	1 2 3 4 5	having been first duly swom, testified as follows EXAMINATION Q. (BY MR. RUKAVINA) Sir, state your the record, please. A. David Klos.	s:
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Accomputerize Street, 38 Mg Akard Street Str	APPEARANCES UNSCH, HARDT, KOPF & HARD At, Suite 3800, Dallas, Tr KAVINA, Attorney at Law, Pence as counsel on behalf Chail: drukavina@munsch.co CACHULSKI, STANG, ZIEHL & Ch Floor, New York, NY 100	2 R, PC, 500 North K 75201, represented appeared via E of the Defendants. DM JONES, 780 Third	1 2 3 4 5 6 7 8 9 10 11	having been first duly swom, testified as follows EXAMINATION Q. (BY MR. RUKAVINA) Sir, state your the record, please. A. David Klos. Q. K-1-o-s? A. K-1-o-s. Q. What's your date of birth? A. May 6, 1982. Q. And where do you live?	s:
Akard Street by DAVOR RU videoconfer Avenue, 34t by JOHN A.	APPEARANCES UNSCH, HARDT, KOPF & HARI At, Suite 3800, Dallas, Tr KAVINA, Attorney at Law, rence as counsel on behalf mail: drukavina@munsch.co ACHULSKI, STANG, ZIEHL & th Floor, New York, NY 100 MORRIS, Attorney at Law,	2 R, PC, 500 North K 75201, represented appeared via f of the Defendants. Dom JONES, 780 Third 017-2024, represented appeared via	24 25 1 2 3 4 5 6 7 8 9 10 11 12	having been first duly swom, testified as follows EXAMINATION Q. (BY MR. RUKAVINA) Sir, state your the record, please. A. David Klos. Q. K-l-o-s? A. K-l-o-s. Q. What's your date of birth? A. May 6, 1982. Q. And where do you live? A. I live in Dallas.	s:
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Street, 38 Street, 38 Akard Street Davor Ru Videoconfer Avenue, 34t by JOHN A.	APPEARANCES UNSCH, HARDT, KOPF & HARI At, Suite 3800, Dallas, Tr KAVINA, Attorney at Law, rence as counsel on behalf mail: drukavina@munsch.co ACHULSKI, STANG, ZIEHL & th Floor, New York, NY 100 MORRIS, Attorney at Law,	2 R, PC, 500 North K 75201, represented appeared via F of the Defendants. DM JONES, 780 Third D17-2024, represented appeared via F of the Plaintiff.	24 25 1 2 3 4 5 6 7 8 9 10 11 12	having been first duly swom, testified as follows EXAMINATION Q. (BY MR. RUKAVINA) Sir, state your the record, please. A. David Klos. Q. K-l-o-s? A. K-l-o-s. Q. What's your date of birth? A. May 6, 1982. Q. And where do you live? A. I live in Dallas. Q. What's your educational background? A. Undergraduate and graduate degrees.	name for
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2 (Pages 5 to 8)

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David Klos - October 27, 2021

- 1 A. As far as I know.
- 2 Q. Have you ever been disciplined or threatened
- 3 with disciplinary proceedings?
- 4 A. No.
- 5 Q. And your relevant work experience, please,
- 6 starting with college and afterwards?
- 7 A. Sure. Out of grad school I started working
- 8 at Deloitte in Boston. I worked at Deloitte for
- 9 approximately three and a half years, between the
- 10 Boston office and the Dallas office.
- 11 And then I began working at Highland Capital
- 12 Management in March of 2009 and I've been at Highland
- 13 since then.
- 14 Q. And when you joined Highland in March of
- 15 2009, what was your title or your role at that time?
- 16 A. My title, if I remember correctly, was
- 17 valuation senior analyst. I'm not certain if that was
- 18 exactly it, but it was something along those lines.
- 19 Q. Was it in the valuation group?
- 20 A. Yes.
- 21 Q. And then give me your -- today you're the CFO
- 22 of Highland; correct?
- 23 A. Correct.
- Q. So give me the progression from valuation
- 25 analyst to CFO with, to the best of your recollection,

- 1 There were a few title changes in between
 - 2 there. I think at one point I was manager, at one
 - 3 point I was senior manager, at one point I was
 - 4 assistant controller and at one point I was controller.
 - 5 I can't remember the exact times of all of 6 those break points.
 - 7 Q. Let me pause you. When you were assistant
 - 8 controller, who was the controller?
 - 9 A. There was quite a bit of time where I was
 - 10 assistant controller and we didn't have a controller.
 - 11 I couldn't tell you the exact time frame, but there was
 - 12 definitely an extended time frame.
 - 13 And then in April of 2020, our existing chief
 - 14 accounting officer left and I assumed his
 - 15 responsibilities at that time.
 - 16 Q. Let me pause you. That's a new term for me.
 - 17 Chief accounting officer?
 - 18 A. Uh-huh.
 - Q. Who was that person?
 - 20 A. The person that left?
 - 21 Q. The person that was the chief accounting
 - 22 officer until April 2020.
 - 23 A. Cliff Stoops.
 - 24 Q. And do you have any idea or knowledge whether
 - 25 at Highland that was like an officer-level position?

6

- 1 the approximate year that you were promoted, et cetera?
 - A. Sure. I was in the valuation role from
- 3 basically March of 2009 to end of 2009.
- 4 I was then brought over to what we call the
- 5 corporate accounting team, so doing the accounting for
- 6 Highland Capital Management, LP and of the other
- ${\bf 7} \quad \text{advisor-type entities, where I was primarily focused on} \\$
- 8 budgeting and forecasting, credit facility compliance.
- 9 That took from roughly 2010 until I think 10 middle of 2011, at which point I was moved over to the
- induce of 2011, at which point I was moved over to the
- 11 fund accounting group, so doing hedge fund accounting,
- 12 which was a short role, really, for probably three or
- 13 four months.
- 14 At which point I was brought back to the
- 15 corporate team and also put in charge of the valuation
- 16 group. I held that role in some way, shape, or form
- 17 more or less continuously for the next several years,
- 18 although certainly my role evolved and changed.
- 19 But in terms of the groups that I had
- 20 oversight over, those were the groups. Like I said, my
- 21 role definitely evolved over time from 2011.
- Q. So by 2017 what was your title?
- 23 A. So, yeah, by that time, I was, I believe,
- ${\bf 24} \quad controller. \ I \ might \ have \ still \ been \ assistant$
- 25 controller.

1 A. It was not. It was more of a term of art, I

- 2 would describe it. So it -- so, yeah --
- 3 Q. To the best of your recollection, when did
- 4 you become the controller at Highland Capital
- 5 Management, LP?
- 6 A. I couldn't pin down a specific date. Like I
- 7 said, the responsibilities were very similar. I would
- 8 guess the change from assistant controller to
- 9 controller was probably in the, most likely in the '16,
- 10 '17, maybe '18 time frame.
- 11 Q. Can we agree that as of May 1, 2019, you were
- 12 the controller at Highland?
- 13 A. Yes.
- Q. So let's focus on that time frame, May 2019,
- 15 and you're the controller. Who do you report to at
- 16 Highland?

20

- 17 A. Frank Waterhouse.
- 18 Q. The CFO?
- 19 A. Correct.
 - Q. No one in between you and him?
- 21 A. Correct.
- Q. So what -- explain to me the role between the
- 23 chief accounting officer and the chief financial
- 24 officer in that time frame, '19, '20?
- 25 MR. MORRIS: Objection to the form of the

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1 question. 1 A. Frank Waterhouse. 2

- 2 THE WITNESS: Very little. Like I said,
- 3 chief accounting officer was more of a term of art.
- 4 What that role actually had oversight of was our retail
- 5 fund accounting, institutional fund accounting,
- 6 operations, so loan settlement and treasury.
- And probably another department or two that
- 8 I'm forgetting, but it did not have any oversight over
- the corporate accounting group.
- Q. (BY MR. RUKAVINA) And in May of 2019, as the
- 11 controller, what were -- what was your role or what
- 12 were your duties?
- 13 A. In May of 2019 I was at that point still
- 14 overseeing the valuation group. I was overseeing the
- 15 corporate accounting group, which my primary direct
- 16 report there was Kristin Hendrix, who really was the
- 17 day-to-day person. But I certainly oversaw her.
- 18 Q. By that you mean the person that answers to
- 19 you?
- A. Correct. Sorry. If I flipped that, I
- 21 apologize. So I was overseeing that group, which had,
- you know, fairly broad responsibilities.
- 23 In terms of, you know, accounting for the
- 24 Advisor, doing forecasts when they were called for,
- 25 performing the audit every year, managing cash,

- Q. And were --
- A. I should clarify too, that the valuation team
- 4 isn't ultimately responsible for the valuations
- 5 themselves, but they do act in this liaison role.
- Q. Perhaps that's my confusion. Is there a
- 7 separate group that handles just valuation?
- A. No.
- Q. Is there an outside consultancy that handled
- 10 that in May of 2019?
- 11 A. I don't know if I would call it consultancy,
- 12 but there was a third-party valuation service provider
- 13 that would do certain of the, call it illiquid, harder
- 14 to value securities.
- 15 Q. So would you say that you were pretty busy in
- 16 April, May 2019?
- 17 MR. MORRIS: Objection to the form of the
- 18 question.
- 19 THE WITNESS: I've been busy throughout my
- 20 career.
- Q. (BY MR. RUKAVINA) In April, May, June 2019, 21
- how many hours a month do you estimate you worked for 22
- 23 Highland?
- 24 MR. MORRIS: Objection to the form of the
- 25 question.

10 12

- 1 processing payroll, things of that nature.
- And then at that time I was also put in
- 3 charge of one of the public REITs that was launching at
- 4 the time under the NexPoint flag. And getting that
- 5 team started.
- 6 Q. Did you mention that in May of 2019 you were
- 7 still involved with the valuation group?
- 8
- Q. Did you have a title at the valuation group?
- A. Nothing distinct from my overall controller
- 11 title. These titles were often, like I said, terms of
- 12 art, whether it was controller or chief accounting
- 13 officer.
- 14 Q. What did the valuation group at Highland do?
- 15 A. Well, valuation group was really a liaison
- 16 with both third-party pricing providers, pricing
- 17 services, brokers on the street, front office, members
- 18 at Highland.
- 19 To, you know, to work on valuing the

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- 20 securities held across the platform, both for Highland
- 21 HCMLP managed funds as well as affiliated managed
- 22 funds.
- Q. So who did -- did you report to anyone at the
- 24 valuation group? In other words, did it have its own
- 25 separate hierarchy kind of?

- THE WITNESS: I don't remember. A 1
- 2 significant number.
- 3 Q. (BY MR. RUKAVINA) Certainly full-time?
- 4 A. Absolutely.
- 5 Q. Would you say that you were working more than
- 200 hours a month in that time frame for Highland?
- A. I don't know how many hours. I should
- clarify, we're using Highland very liberally. When I
- say Highland, supporting the entire apparatus,
- 10 platform. Significant number of hours at that time,
- 11 and before and after.
- Q. And let's explore that a little bit. You
- 13 mentioned one of the funds for NexPoint. I'd like to
- 14 talk about NexPoint Advisors, LP, just NexPoint
- 15 Advisors, LP.
- 16 Did you ever have an official role or title
- 17 with NexPoint Advisors, LP?
- 18 A. Not that I can remember.
- 19 Q. Do you know if you were ever the controller
- 20 for that entity?
- 21 A. I'm not certain. I'm not certain.
- 22 O. But I take it that pursuant to the shared
- 23 services agreement you, as an employee of Highland,
- 24 were providing services on behalf of NexPoint?
- 25 **MR. MORRIS:** Objection to the form of the

16

David Klos - October 27, 2021

13

1 question.

2 THE WITNESS: I provided many of the same

3 services for NexPoint Advisors that I provided for

4 Highland, similar types of services.

5 Q. (BY MR. RUKAVINA) And briefly about Highland

6 Capital Management Fund Advisors, LP, HCMFA, did you

7 ever have like an official title or role with that

8 entity, to your knowledge?

9 A. Again, not that I can remember.

10 Q. Not to your knowledge, the controller ever of

11 that entity?

12 A. I'm not certain whether I was or not.

13 Q. But you provided services to that entity as

14 part of your role at Highland pursuant to shared

15 services?

16 A. Similar to NexPoint as I described.

17 Q. When you were controller of Highland, was

18 that an officer-level position at Highland?

19 A. No.

20 Q. When did you become the chief financial

21 officer of Highland?

22 A. Chief financial officer?

23 O. Uh-huh.

24 A. 2021, March.

25 Q. After Mr. Waterhouse was gone?

1 Q. Do you have an expectation as to when the

2 winding down and monetization of Highland and its

3 assets will be complete?

4 A. That's very hard to speculate, especially

5 given the amount of litigation that's going on because

 $6 \hspace{0.1in}$ I don't know when that's going to play out and that's a

7 material asset.

Q. Have you discussed with Mr. Seery how long

9 that might be?

8

10

14

A. Not that I can specifically remember.

11 Q. Do you believe it will be at least probably

12 two years, from today?

13 A. I don't know.

Q. This bonus compensation, does it or any

15 amount of it depend on how well Highland or the

16 claimant trust, how well they do vis-a-vis collecting

17 money from creditors?

18 A. Not that I can think of. I'd have to

 $19\,\,$ probably go back and look and understand the back-end

20 piece to say definitively.

21 Q. And back-end piece, does that mean whenever

22 the winding down is completed?

23 A. Yeah, like I said, I'm not exactly -- I'm not

24 completely facile with the exact timing, if it's

25 completed 100 percent or 80 percent, what kind of

14

A. Yes.

1

2

Q. And I'm going to ask you a little bit about

3 your compensation today at Highland.

4 You don't have to give me specific numbers

5 unless I ask you, please, but I take it you have a base

6 compensation?

7 A. Yes, I have a base.

8 Q. Do you have any bonus structure compensation?

A. Yes, I have a bonus.

10 Q. And what is that bonus number or whether it's

11 paid out based upon or contingent upon?

MR. MORRIS: Objection to the form of the

13 question.

14 THE WITNESS: As I understand, it's based on

15 my offer letter.

16 Q. (BY MR. RUKAVINA) On your what?

17 A. My letter for extending an offer.

18 Q. Tell me, what is your -- without having to

19 use express numbers, what is your bonus compensation?

20 When is it paid, et cetera?

21 A. Yeah, so it's not too dissimilar from the

22 prior Highland plan that has semiannual installments

23 payable. And then there's a, kind of an end of plan

24 bonus when -- I don't remember the specifics on exactly

25 what triggers that, but it's back-ended in the plan.

1 qualitative considerations go into that. But

2 substantially completed.

Q. Sitting here today, do you think or believe

4 that any portion of your compensation over the next

5 however long it takes to wind down Highland depends on

6 how much Highland recovers from the litigation

7 regarding promissory notes?

8 A. I really take exception to that question

9 because the insinuation is that it's going to somehow

10 change my answers here, and it's absolutely not.

11 How litigation, it may or may not affect my

12 ultimate compensation, but that's not going to affect

13 one iota of the answers I give you today or at any

14 time, whether I'm on or off the record.

5 Q. Fair enough. So you're going to testify

16 today truthfully regardless of your compensation. I

17 got you; right? Correct?

A. I didn't follow what you just asked me.

19 Q. You're going to testify today truthfully

20 regardless of how these events may or may not affect

21 your compensation; right?

22 A. It's such a loaded question I can't even

23 begin to answer that.

24 Q. So sitting here today -- I want to ask you

25 the same question I did before, and your answer to me

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20

David Klos - October 27, 2021

17

- 1 was that you took exception to the insinuation. Now
- 2 I'd like you to answer my question.
- 3 Which is, sitting here today, do you believe
- 4 that any part of your compensation in the future,
- 5 however long it takes to wind down Highland, is going
- 6 to depend on how well Highland does in these
- 7 litigations concerning the notes?
 - A. I believe my ultimate compensation will
- depend on how long this process takes, which I don't
- 10 know, and ultimate recoveries to trust beneficiaries
- 11 under the plan.
- 12 And so I do expect that it will vary, but I
- 13 would reiterate my earlier comment.
- 14 Q. So sitting here today, you understand that if
- 15 the trust beneficiaries recover more, then you might be
- 16 compensated more?
- 17 A. That's possible.
- 18 Q. Well, sir, I'm not trying to be a smart ass,
- 19
- 20 MR. MORRIS: Actually, you're coming awfully
- 21 close, just to be clear, so be careful, because I'm
- 22 offended as well. But continue.
- 23 MR. RUKAVINA: I'm entitled to ask the man
- 24 about his compensation.
- 25 MR. MORRIS: Right. And your clients have

- A. Not in any substance.
- Q. And when do you recall you might have had 2
- those discussions with her?
- A. I'm not even sure.
- 5 Q. Would it have been recently or like 9,
- 6 10 months ago?
- A. No, it would have been recently.
- Q. And with Mr. Seery, when did you have a
- general conversation with Mr. Seery?
- A. I've had, you know, one or more general
- 11 conversations with Mr. Seery. It's my understanding
- 12 that he was the 30(b)(6) witness, and he had questions
- 13 in preparation for his role in that.
- 14 Q. So that would have been before last Thursday
- 15 that you talked to him? I'll represent to you that
- 16 that's when his deposition was.
- 17 A. Yeah, if I'm accepting that representation,
- 18 yes, prior to.
- 19 Q. Other than that conversation with respect to
- 20 him preparing for the 30(b)(6), did you have a
- 21 discussion with him about this litigation as it might
- 22 relate to your deposition?
- 23 A. I don't believe so in terms of relating to
- 24 this deposition. We've talked at length about the
- 25 notes more generally.

18

- 1 \$75 million, hard dollars at stake in this litigation,
- 2 so we should never believe anything that he says? Is
- 3 that where we are now?
- Q. (BY MR. RUKAVINA) Sir, again, what is your
- 5 bonus compensation as it relates to how well the
- 6 claimant trust does? Do you remember or not?
- A. I don't know that that's even something that I could know at this point.
- Q. In preparing for this deposition, I take it
- 10 you spoke to legal counsel, and I'm not entitled to
- 11 know that and I'm not asking that.
- 12 But did you talk to anyone else?
- 13 A. I've spoken in general terms to Mr. Seery.
- 14 Q. Okay. Anyone else?
- 15 A. I've spoken, again in general terms, to
- 16 Kristin Hendrix.
- 17 Q. Anyone else?
- 18 A. Not that I can think of.
- 19 Q. Now, I understand you spoke to Ms. Hendrix
- when legal counsel was present; right?
- 21 A. Yes.
- 22 O. So let's exclude that conversation.
- 23 Did you have any conversations with
- 24 Ms. Hendrix regarding this deposition or this
- 25 litigation at which counsel was not present?

1 Q. And we'll go through that I'm sure.

- 2 So other than the conversations with
- 3 Ms. Hendrix and Mr. Seery and, of course, with counsel
- that I'm not entitled to know about, did you discuss
- 5 this deposition or what you might be asked today with
- anvone else?
- A. No.
- Q. Okay. Did you read all or any portions of
- the deposition of Frank Waterhouse?
- A. Certainly didn't read all of it. I have a 10
- general understanding of the topics that were -- that's
- 12 a bad way to frame it.

I have a general understanding of a few 13

- 14 points that were covered in his deposition.
- 15 Q. Were you provided -- were you provided the
- 16 exact pages of any of his deposition?
- **17** MR. MORRIS: Objection. Direct him not to
- 18 answer.
- 19 MR. RUKAVINA: You're going to direct him not
- 20 to answer whether he read --
- 21 MR. MORRIS: If you're asking him whether I
- 22 directed him to particular --
- 23 MR. RUKAVINA: I didn't ask that.
- 24 MR. MORRIS: Rephrase your question.
- 25 Q. (BY MR. RUKAVINA) Did you read any pages

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David Klos - October 27, 2021 23 21 1 from Mr. Waterhouse's deposition? 1 was? 2 MR. MORRIS: Objection. Asked and answered. 2 A. Yeah, it was Lauren Thedford, who is Highland 3 You can answer again. 3 in-house counsel. 4 THE WITNESS: I don't recall -- I don't 4 Q. She's a lawyer? 5 recall reading it. 5 A. Yes. Q. (BY MR. RUKAVINA) So were you provided a 6 6 Q. Do you recall from that -- strike that. 7 summary of his deposition? Did you know on or about May 31, 2017 what 8 A. I have had discussions with Mr. Morris in 8 the purpose or reason behind Exhibit 13, this preparation for this deposition. promissory note, was? 10 Q. That's fine. And we can stop there. 10 MR. MORRIS: Objection to the form of the 11 Did you read or -- did you read the whole or 11 question. 12 any portion of Mr. Seery's deposition? 12 THE WITNESS: The purpose was to take 13 A. No, I don't believe I -- no, I don't believe 13 existing notes, which I believe were exclusively demand 14 so. 14 notes, I'm not a hundred percent certain on that, and 15 Q. Is it the same answer, that whatever you 15 roll them into a single note that would have a 30-year 16 discussed would have been through counsel? 16 amortization period. 17 A. Yes. Q. (BY MR. RUKAVINA) Do you know why that was 17 Q. Did you see any of the videotape of either 18 18 done? 19 Mr. Waterhouse's or Mr. Seery's deposition? 19 A. I believe it was done probably for a number 20 A. No. 20 of reasons, one of which was to ensure some level of 21 Q. So let's talk about the NexPoint 21 cash flow back to Highland, when I say Highland, 22 \$30.7 million note. 22 Highland Capital Management, LP, on an annual basis. 23 You're familiar with that note; right? 23 Q. Was that a concern at Highland Capital MR. MORRIS: Objection to the form of the 24 24 Management, that it wasn't getting any level of cash 25 question. 25 flow back? 22 24 1 THE WITNESS: Before I answer that, I'd like A. It wasn't a concern of mine. I don't know if 2 it was a concern of others. 2 to see the note. 3 Q. (BY MR. RUKAVINA) It's in here. I'm looking 3 Q. Do you recall whether any auditor ever raised 4 for the exhibit number. It's in here somewhere. 4 that concern? 5 A. Yes, I'm familiar with this note. A. The auditors did raise that in conjunction 6 Q. Are you familiar with anything having to do 6 with the audit that was concluding around this time. 7 with the negotiation or execution of this note? So yes, they did raise it, you know, probably in the 8 MR. MORRIS: Objection to the form of the May of 2017 time frame. 9 question. 9 Q. Do you know who decided that it would be a 10 THE WITNESS: Can you repeat. 10 30-year term note? By that I mean 30 years. 11 O. (BY MR. RUKAVINA) Yes. Let me rephrase it. 11 A. Jim Dondero. 12 Did you have anything to do, back on or about 12 Q. Do you know if he decided that in connection 13 May 31, 2017, with the negotiation or execution of this 13 with discussions with anybody or, to your knowledge, he 14 promissory note? 14 just decided? 15 MR. MORRIS: Objection to the form of the 15 A. As far as I know he just decided it. I 16 believe there was a draft at one point that was for 16 question. 17 20 years, and he wanted to do 30. 17 THE WITNESS: Nothing with respect to the

18 negotiation - 19 Q. (BY MR. RUKAVINA) I'm sorry.
 20 A. In terms of the execution, I believe I
 21 coordinated with internal counsel, who drafted the
 22 note, and I can't remember -- I can't recall one way or
 23 the other if I assisted in actually physically

25 Q. Do you remember who that internal counsel

24 receiving signatures. I just don't remember.

Q. Do you know if he decided that in connection
with discussions with anybody or, to your knowledge,
just decided?

A. As far as I know he just decided it. I
believe there was a draft at one point that was for
20 years, and he wanted to do 30.

Q. So this note is executed in May 31, 2017.
Did you have any further role prior to, let's say,
December 1, 2020 with respect to anything to do with
this promissory note?

A. Sorry, tell me the date again.
Q. From execution of the note until December 1,
24 2020?

A. And the question was?

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- 1 Q. Did you have any role in that time frame with
- 2 respect to this promissory note on behalf of Highland?
- MR. MORRIS: Objection to the form of thequestion.
- 5 THE WITNESS: I don't know how to answer
- 6 that, it's such an open-ended question. I just don't
- 7 know how to respond to that.
- 8 Q. (BY MR. RUKAVINA) If payments were made on
- 9 this note, would you have any duty to record or credit
- 10 those payments?
- 11 MR. MORRIS: Objection to the form of the
- 12 question.
- 13 THE WITNESS: I wouldn't have personally in
- 14 my role, but my team would have been involved in the
- 15 recording of those.
- 16 Q. (BY MR. RUKAVINA) And when payments were due
- 17 on this note, did you personally have any role with
- 18 respect to doing anything to facilitate those payments?
- 19 A. When payments were due did I have anything --
- 20 yes.
- Q. What was your role?
- 22 A. So my role, as part of the corporate team,
- 23 part of our role is managing cash at the various
- 24 entities. So I was involved in weekly cash meetings,
- 25 where things like upcoming, whether it's an obligation

- 1 Capital Management or NexPoint Advisors as to a
- 2 decision as to whether any prepayments on this note
- 3 would ever be made?
- 4 MR. MORRIS: Objection to the form of the
- 5 question.

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- 6 THE WITNESS: Can you repeat.
 - Q. (BY MR. RUKAVINA) Let's start from scratch.
 - Do you have any memory of any payments being
- 9 made on this note, Exhibit 13, prior to their scheduled
- 10 dates of payment?
 - A. There were payments on -- and to be clear,
- 12 we're talking about the original 30.7- NexPoint
- 13 promissory note? There were payments that I recall
- 14 happening throughout 2019 on this note.
 - Q. And we can look at Exhibit 14.
- MR. MORRIS: What number?
- 17 MR. RUKAVINA: 14, 1-4.
- 18 Q. (BY MR. RUKAVINA) And those are only
- 19 numbered because Ms. Hendrix, they were used for her 20 deposition.
 - A. Sure. Just trying to keep these in order, I
- 22 apologize. Got it.
- Q. Do you recognize Exhibit 14?
- 24 A. Generally. I can't say that I can verify
- 25 that this is completely accurate. But it looks

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1 or a receipt, would be put on people's radars.

- 2 And we would, in connection with the 30-year
- 3 notes such as this one from NexPoint, we would either
- 4 confer with Jim or -- certainly Jim. Also likely his
- 5 accountant.
- 6 In terms of teeing them up to make sure that
- 7 they were prepared from a cash flow statement to make
- 8 the payment.
 - Q. What do you mean by his accountant?
- 10 A. Melissa Schroth.
- O. What do you mean by his? That's a new name
- 12 to me. Who is Melissa Schroth?
- 13 A. I find it hard to believe that she's a new
- 14 name to you. But I think her title was executive
- 15 accountant, and she was the keeper of Jim's -- many of
- 16 Jim's trusts and personal entities.
- 17 Q. Was she a Highland employee?
- 18 A. She was. And when I say Highland, I should
- 19 be clear, Highland Capital Management, LP.
- Q. So when you say Jim's accountant, she was
- 21 still a debtor employee, just that she handled
- 22 primarily Jim's personal matters?
- 23 A. She was still a Highland Capital Management,
- 24 LP employee but she did Jim's personal matters.
- 25 Q. Did you have any role at either Highland

- 1 familiar to a loan amortization schedule.
- Q. Would it have been maintained by Highland?
- 3 A. Yes.
- 4 Q. And I'll tell you that no one has yet to
- 5 authenticate this with a hundred percent precision, so
- 6 I'm not asking you to ratify these numbers, but let's
- 7 assume that they are what they are.
- 8 This does purport to show on the second page
- 9 a number of transfers in 2019, which goes along with
- 10 your recent answer.
 - Do you see those, sir?
- 12 A. I do.

11

- 13 Q. In particular, 750,000, then 1.3 million,
- 14 300,000, 2.1 million, 630,000, 1.3 million.
- 15 You see all those, sir?
- 16 A. Yes, I see every one.
- 17 Q. Do you have any memory, without going into
- $18\,\,$ those transfers of those dates to the dollar, do you
- 19 have any memory that those transfers were made?
- 20 A. Yes. Again, not a specific recollection of
- 21 where I was at the time, but yes, I know that these
- 22 transfers were made.
- Q. Do you know why they were made in those
- 24 amounts and on those dates?
- 25 A. No, not without speculating.

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- 1 Q. What would be your speculation if you were to 2 speculate?
- 3 A. My speculation would be that it would be for
- 4 liquidity needs at HCMLP, Highland Capital Management,
- 5 LP, needing liquidity to operate. Again, that's
- 6 speculation. I don't know for a fact that that's true,
- 7 but that's what I would assume.
- Q. Who would have made those decisions in 2019
- 9 to transfer those funds?
- 10 MR. MORRIS: Objection to the form of the
- 11 question.
- 12 THE WITNESS: Yeah, it would have been either
- 13 Frank or Jim. I can't say with certainty, but one of
- 14 the two. When I say Jim, I should be clear,
- 15 Mr. Dondero.
- 16 Q. (BY MR. RUKAVINA) Between January and
- 17 July 2019, do you have any recollection that there was
- 18 any particular liquidity issue or need at Highland
- 19 Capital Management?
- 20 A. Yeah, Highland was dealing with liquidity
- 21 problems throughout 2019. Maybe not every single day
- 22 of the year, but we were continuously needing to bridge
- 23 liquidity.
- Q. And you joined Highland in 2009. From that
- 25 point in time, 2009, through 2019, was there any

- 1 them had been made and you executed them?
 - 2 A. Both, depending on the circumstances.
 - 3 Q. So sometimes you would be brought into a
 - 4 discussion?
 - 5 A. Yes.

6

- Q. And can you think of any particular example?
- 7 A. Of when I was brought into the discussion of
- 8 whether to transfer? I can't think of an individual
- 9 example but we met quite regularly with Jim on cash.
- 10 So to the extent that either he needed cash
- 11 on one of his entities, he might let us know that. Or
- 12 to the extent that Highland needed cash, we might let
- 13 him know that and ask for basically his assistance in
- 14 helping us to meet our own cash needs.
- 15 Q. And did he usually find a way to facilitate
- 16 the cash need either at one of his entities or at
- 17 Highland?

18

- A. I suppose until October 16 of 2019.
- 9 Q. Yes. Prior to bankruptcy, do you recall any
- 20 instance where one entity wasn't able to transfer funds
- 21 to another for liquidity purposes?
- 22 A. I can't think of a specific situation. But
- 23 I'm sure there were situations where -- you know, cash
- 24 was always something that was being juggled, so I don't
- 25 know that necessarily liquidity could be met the same

30

- 1 practice at the enterprise of those businesses to
- 2 transfer funds between each other on a basis of when
- 3 one needed it and one had it?
- 4 A. Yes, that was a fairly, generally speaking,
- 5 that was a fairly common practice, of using different
- 6 entities within the overall structure to bridge
- 7 liquidity.
- 8 Q. Would that have been Mr. Dondero who, in the
- 9 final analysis, would have made those decisions?
- 10 A. Maybe not a hundred percent, but I'd say
- 11 the -- if not a hundred percent, certainly most.
- 12 Q. And who else might have participated,
- 13 Mr. Waterhouse?
- 14 A. Potentially Mr. Waterhouse. And the reason I
- 15 hedge on that a little bit is I don't think Frank would
- 16 have made any of these decisions on his own either.
- 17 But I may have heard them from Frank via Jim.
- 18 Q. So in those same years, were you ever asked
- 19 by Mr. Dondero or Mr. Waterhouse as to whether funds
- 20 should be transferred from one entity to another for
- 21 liquidity purposes?
- A. Can you ask that again, please.
- 23 Q. Yes. Trying to understand, were you part of
- $24 \hskip 3mm those \hskip 3mm discussions \hskip 3mm as \hskip 3mm to \hskip 3mm whether \hskip 3mm these \hskip 3mm transfers \hskip 3mm should$
- 25 be made, or did you just learn that a decision to make

1 day.

2

- But eventually we were able to manage through
- 3 those situations, you know, oftentimes through some of
- 4 these loans.
- 5 Q. In instances that you may remember when
- 6 Highland Capital Management needed liquidity, do you
- 7 know how Mr. Dondero decided from which other entity to
- 8 transfer the cash?
- 9 A. I can't step into his brain and think about
- 10 his decision-making process, but if I was going to
- 11 oversimplify it I would speculate that it would be
- 12 based on who has cash in that moment.
- 13 Q. Would he ask you or someone on your team who 14 had cash?
- 15 A. At times, depending on which entity we're
- 16 talking about. Because my team certainly didn't have
- 17 responsibility for every single entity in the
- 18 enterprise, but we did have responsibility for some.
- 19 Q. And if your team -- so -- strike that.
- 20 So over the general -- talking about
- $21\;$ generally now, over those 10 years when there were
- 22 these intercompany transfers for liquidity purposes,
- 23 how were they booked by the debtor, by Highland Capital
- 24 Management?
 - MR. MORRIS: Objection to the form of the

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1 question.

- THE WITNESS: Help me on the direction. So
- 3 this is money that Highland is receiving or money that
- 4 Highland is sending?
- 5 Q. (BY MR. RUKAVINA) Sending out.
- 6 A. Sending out. So this is -- in the scenario
- 7 that you're describing, this money that Highland is
- sending out to meet some other corporate obligor's
- 9 liquidity needs?
- 10 Q. Yes, sir.
- 11 A. So those would be booked as a loan. I
- 12 would -- I need to hedge a little bit because I'm not
- 13 a hundred percent certain, but I would say if not
- 14 exclusively via loans close to exclusively.
- 15 Q. And would they -- strike that.
- Would they usually be papered up with a
- 17 promissory note?
- 18 A. Yes.
- 19 Q. Now, why was that the general course during
- 20 10 years? Was there a policy and procedure in place,
- 21 or would Dondero say book it as a loan, or was that
- 22 just the right thing to do from an accounting
- 23 perspective?
- 24 MR. MORRIS: Objection to the form of the
- 25 question.

- 1 Q. (BY MR. RUKAVINA) To your knowledge, was
- 2 there any written policy or procedure in place at
- 3 Highland Capital Management with respect to how
- 4 transfers from Highland to an affiliated entity should
- 5 be booked or treated?
 - A. No written policy or procedure that I'm aware
- 7 of.
 - Q. Is it fair to say that by May 2019, the
- 9 corporate accounting group had handled so many of these
- 10 transfers that it believed that if Highland was
- 11 transferring funds to another affiliated entity, it's
- 12 probably a loan?
- 13 MR. MORRIS: Objection to the form of the
- 14 question.
- 15 THE WITNESS: Yeah, I don't know that I can
- 16 answer that in terms of the corporate accounting team.
- 17 That just feels way too broad.
- 18 It was certainly the practice that when
- 19 somebody needed liquidity and it was appropriate from an
- 20 accounting perspective, that's how it would be booked.
- 21 And there was no reason to doubt that that was
- 22 the appropriate way to do it, particularly with
- 23 direction from either Frank or Jim.
- Q. (BY MR. RUKAVINA) Is it your testimony that
- 25 in each instance that happened, that either Frank or

34

- THE WITNESS: At the end of the day it's at
- 2 the direction of Jim Dondero, so I can't tell you
- 3 exactly why he wanted it to be done that way. But that
- 4 was certainly the practice of how it was done in those
- 5 situations.
- 6 Q. (BY MR. RUKAVINA) To your knowledge, did Jim
- 7 Dondero ever tell you or anyone else that when Highland
- 8 is transferring funds to one of his affiliated entities
- 9 that it should always be booked as a loan?
- 10 A. So remembering 10 years' worth of
- 11 conversations, I can't remember a specific instance
- 12 where he would have said, always book every single
- 13 transaction I direct you to do as a loan. However,
- 14 that was the practice.
- 15 Q. Different question.
- 16 Do you remember that in each instance, and
- 17 again, that might be unfair over 10 years, but do you
- 18 remember in each instance when Mr. Dondero said
- 19 transfer money from Highland to this other entity for
- 20 liquidity needs that he said book it as a loan?
- 21 MR. MORRIS: Objection to the form of the 22 question.
- 23 THE WITNESS: I can't recall with any
- 24 specificity what he may or may not have specifically
- 25 said so long ago.

1 Jim said, this is a loan, the "this" being the transfer

- 2 from Highland to an affiliated entity for liquidity
- 3 purposes?
- 4 MR. MORRIS: Objection to the form of the
- 5 question.
- 6 THE WITNESS: I can't recall with that level
- 7 of specificity if those words came out of Jim's mouth.
- 8 But with 0 percent doubt in my mind, every single one
- 9 of those loans was done with the authority of Jim or
- 10 Frank, or both.
- 11 Q. (BY MR. RUKAVINA) So going back to this
- 12 Exhibit 14, now I'm going to ask you about these
- 13 payments coming in.
- 14 Assuming that these payments were actually
- 15 made in 2019 --
- 16 And I think, John, you sent me this morning,
- 17 or maybe last night, some bank statements?
- 18 MR. MORRIS: I actually sent all of the
- 19 backup for all payments made, I think, under the notes
- 20 at issue a week or two ago.
- 21 Q. (BY MR. RUKAVINA) How would -- so assuming
- 22 that these payments in 2019 that NexPoint made didn't
- 23 technically have to be made at that point in time, how
- 24 would Highland have booked these payments?
 25 A. So I can't tell the column headers, so you'll

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1 have to excuse me if I flip them.

9

2 Q. They'll be on the first page. Rip the page 3 off if you need to.

A. First one is interest, second one is 5 principal. On the far right is the actual amount of the payment. So, for example, March 29, 750,000.

And the -- the column that has the negative 8 411,000 is the application of interest and the 338- is the application of principal.

Q. So again, if Highland -- strike that.

11 If NexPoint made a payment that was not 12 technically due at that point in time, it would be recorded as payments on principal and interest?

14 A. It would be recorded as it's reflected in the 15 schedule. So there's an application of interest and an 16 application of principal.

17 Q. So based on your understanding and 18 experience, if that payment wasn't due at that time, would it have been a prepayment by NexPoint?

20 MR. MORRIS: Objection to the form of the 21 question.

22 THE WITNESS: Yeah, I'm not sure that it's a 23 prepayment or not. It's certainly a payment. It's

24 certainly voluntary. It's not spelled out under the

25 schedule. I don't know that it's a per se, capital P,

1 question.

Q. (BY MR. RUKAVINA) And his objection is

3 valid. And just to give you a little bit of a fine

point, does someone look at the promissory note to

5 decide that? Or is there some other rule or procedure

that someone looks at?

MR. MORRIS: Objection to the form of the 8 question.

THE WITNESS: So the person -- I don't know 10 that I can specifically name a person because the role

11 probably changed over time. But either our corporate accountant, or the 12

13 corporate accountant's boss, which was Kristin Hendrix 14 for years, would have been responsible for recording and

15 tracking those payments.

So some combination of the corporate 17 accountant and Kristin would have applied those

18 payments, and that rolls up through my and Frank's

review ultimately.

20

Q. (BY MR. RUKAVINA) So if I can round off this 21 discussion, I think you told me a few minutes ago that

22 in each instance that Highland was transferring money

23 out to an affiliate.

24 Whether or not you remember Dondero or 25 Waterhouse saying it's a loan, it would have been a

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1 prepayment. I'm just not certain.

Q. (BY MR. RUKAVINA) Well, maybe without 3 respect to these specific transfers.

Generally, generally, if one of the Dondero 5 affiliates made a payment that wasn't scheduled, how 6 would the debtor have accounted for that payment?

A. It would have recorded the payment as a 8 reduction to either or both outstanding accrued

interest or principal.

10 Q. You wouldn't call those prepayments?

11 A. I don't know the definition of prepayment.

12 It's a payment. It's off schedule, but I don't know

13 whether it's a per se prepayment.

Q. Would that be something in your experience

15 that we would look at the promissory note to maybe 16 determine?

17 MR. MORRIS: Objection to the form of the 18 question.

19 THE WITNESS: I don't know.

20 Q. (BY MR. RUKAVINA) Well, remember, I'm asking

21 you the same question just in different ways.

22 Who decides at the debtor, or how does the

23 debtor decide, if an unscheduled payment is made, how 24 to apply it?

25 MR. MORRIS: Objection to the form of the 1 loan because that's how it always was and it was always

2 authorized. Generally correct?

3 MR. MORRIS: Objection to the form of the

4 question.

THE WITNESS: There were a few "always" and

6 "generallys" in there. And like I said, when it came

7 to liquidity needs, my recollection is that these would

8 be handled via loans.

Q. (BY MR. RUKAVINA) And in reverse, if a

10 Dondero entity made a payment prior to a scheduled

11 payment on a note, generally there would be credit

12 against principal and/or interest provided on that

13 note?

14 MR. MORRIS: Objection to the form of the

15 question.

THE WITNESS: Generally speaking, yes, if the 16

17 payment was for payment on the note.

18 Q. (BY MR. RUKAVINA) Well, that goes back to my 19

20 Do you know how these payments on Exhibit 14

21 in 2019 were determined to be payments on these notes,

22 as opposed to a transfer from NexPoint to Highland for

23 some other reason?

24 A. What other reason would it be, if I can be so

25 bold.

11 (Pages 41 to 44)

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- 1 Q. Can you think of any other reason in 2019?
- 2 A. Well, Highland had -- Highland had shared
- ${f 3}$ services and intercompany agreements with NexPoint, at
- 4 this time.
- 5 But these were not payments that could
- 6 possibly be confused with those payments. These are
- 7 off cycle, they're larger amounts, and there's nothing
- 8 that they could be other than payments against the
- 9 loan.

17

- 10 Q. So I asked you before, and I think you said
- 11 that you were speculating with respect to these
- 12 payments, that Highland needed money at that time.
- 13 Do you recall in 2019 any discussions with
- 14 anyone, Dondero or Waterhouse, to the effect that
- 15 NexPoint has excess cash so maybe NexPoint should
- 16 transfer some money to Highland?
 - MR. MORRIS: Objection. Asked and answered.
- 18 THE WITNESS: Do I still answer?
- 19 Q. (BY MR. RUKAVINA) Yes.
- 20 MR. MORRIS: Yes.
- 21 THE WITNESS: And sorry, I got lost there.
- 22 Q. (BY MR. RUKAVINA) Yes. So my predicate was
- 23 you testified before that you were assuming that these
- 24 payments were because of a cash need at Highland;
- 25 right?
- 42 44

- 1 A. Correct.
- 2 Q. So with that predicate my question is, do you
- 3 recall discussing with Dondero or Waterhouse or with
- 4 anyone as to why NexPoint would be transferring money
- 5 to Highland at that time?
- 6 A. Yes, I would have had conversations with
- 7 Mr. Dondero or Mr. Waterhouse.
- 8 Q. And do you remember specifically in 2019 why
- 9 these transfers were made from NexPoint as opposed to
- 10 some other Dondero entity?
- 11 A. Not with specificity, but certainly NexPoint
- 12 was generating cash at that time, and had the ability
- 13 to assist with Highland's liquidity.
 - Q. So sitting here today, you've told me
- 15 generally and logically that you have no specific
- 16 memory why between January 2019 and August 2019, any of
- 17 these payments on Exhibit 14 were made by NexPoint?
- 18 A. I have no specific memory, but I would say
- 19 with certainty that most or all of this was driven by
- 20 Highland HCMLP liquidity needs.
- Q. And most or all of this would have been
- 22 Highland in the first instance going to NexPoint and
- 23 saying, hey, can you send us some cash?
- MR. MORRIS: Objection to the form of the
- 25 question.

- THE WITNESS: Yeah, the premise of that,
- 2 given that Mr. Dondero is in control of both sides,
- 3 it's a faulty premise.
 - Q. (BY MR. RUKAVINA) But you told me not that
- 5 long ago that in these weekly cash meetings that it
- 6 would be your team at Highland who would go to
- 7 Mr. Dondero and say Highland has a liquidity issue.
- 8 So wouldn't that liquidity issue have
- originated with the Highland team?
- A. Mr. Dondero is the president of Highland.
- 11 He's the president of NexPoint. We're employees of
- 12 Highland. We're also shared services providers for
- 13 NexPoint.

19

- 14 The waters are very muddy in terms of who is
- 15 wearing what hat in that conversation.
- 16 Q. But Mr. Dondero doesn't know that Highland
- 17 has a liquidity issue unless someone from the corporate
- 18 accounting group tells him, does he?
 - MR. MORRIS: Objection to the form of the
- 20 question. I hope that's not the case.
- 21 THE WITNESS: He has the ability to know what
- 22 our cash position is at any given time, at that time.
- Q. (BY MR. RUKAVINA) So why would you have
- 24 these weekly cash meetings with Mr. Waterhouse and
- 25 sometimes Mr. Dondero?
- 1 A. So these were cash forecasts, looking at
 - 2 outlook. I can tell you almost without exception,
 - 3 maybe -- with maybe without exception, be speculating,
 - 4 but those forecasts would be showing negative numbers
 - 5 at Highland, virtually nonstop.
 - And so it was important, my opinion, but it
 - 7 was probably important to Frank to make sure that he
 - 8 was getting in front of Jim to make sure that those
 - 9 needs were being addressed timely.
 - 10 Q. So I've asked that question. I want to ask
 - 11 you a different question.
 - 12 For any of these payments between
 - 13 January 2019 and August 2019 reflected on Exhibit 14,
 - 14 do you have any personal knowledge as to whether they
 - 15 were intended to be prepayments or not?
 - 16 MR. MORRIS: Objection to the form of the
 - 17 question.
 - 18 THE WITNESS: I don't know whether they were
 - 19 intended to be prepayments at that time.
 - 20 Q. (BY MR. RUKAVINA) Sitting here today, seeing
 - 21 this document as a CPA and as a sophisticated person,
 - 22 do you read this Exhibit 14 to indicate that those
 - 23 payments were booked as prepayments?
 - **MR. MORRIS:** Objection to the form of the question.

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- THE WITNESS: Again, the term "prepayments"
- $2\ \ \$ is the one I'm struggling with. I can ascertain that
- 3 there are payments and they're off schedule. But I
- 4 don't know that I can ascertain that they're
- 5 prepayments.
- Q. (BY MR. RUKAVINA) Well, if a borrower makes
- 7 a payment that's ahead of schedule, how would that
- 8 generally be accounted for?
- 9 MR. MORRIS: Objection to the form of the
- 10 question.
- 11 THE WITNESS: It would be accounted for as a
- 12 reduction of principal or interest or some combination
- 13 of the two.
- 14 Q. (BY MR. RUKAVINA) Which would relieve the
- 15 borrower of having to make that at some point in the
- 16 future; right?
- 17 MR. MORRIS: Objection to the form of the
- 18 question.
- 19 THE WITNESS: No. The borrower still owes
- 20 the money. This is showing 23-point -- pick a date.
- 21 May 31, 23.034-. That there's significant obligations
- 22 that are still outstanding.
- 23 Q. (BY MR. RUKAVINA) So on June 4, 2019 -- I'm
- 24 sorry, on June 19, 2019, the borrower made a
- 25 \$2.1 million payment. That's what this shows; correct?

- 1 that the maker may pay outstanding accrued interest, or
- 2 unpaid principal.
- 3 Q. (BY MR. RUKAVINA) But my question is, as I
- 4 understand accrued interest, it means interest that has
- 5 already occurred or accrued as of the date, like
- 6 today's date; right?
- 7 A. Uh-huh.
- 8 MR. MORRIS: Objection to the form of the
- 9 question.
- 10 Q. (BY MR. RUKAVINA) Do you agree with that?
- 11 Do you agree with that? Accrued interest
- 12 means interest that has already come due, that has
- 13 actually happened because interest happens over time.
- 14 A. Accrued interest --
- 15 MR. MORRIS: Objection to the form of the
- 16 question.
- 17 Q. (BY MR. RUKAVINA) Why don't you start. Why
- 18 don't you define for me accrued interest.
 - A. Sure. Accrued interest would be outstanding
- 20 and unpaid interest that -- sorry, it's hard to define
- 21 it without using the term. But it's interest that's
- 22 accumulated in respect of a principal amount through a
- 23 given date.
- Q. So how do you prepay accrued interest?
- 25 A. How do you prepay accrued interest. Again,

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- 1 A. I see that.
- Q. You're not saying that the borrower would
- 3 ever have to make that same \$2.1 million payment again,
- 4 are you?
- 5 A. No. What I'm saying is, based on that 2.1-
- 6 payment -- and this is reading this cold.
- 7 But based on that 2.1- payment, 66,000 was
- 8 applied to interest, which left zero accrued interest
- 9 outstanding. 2.03- applied to principal, which left
- 10 24.7- and change still outstanding.
- 11 Q. Well, I'm going to ask you about the
- 12 promissory note then, Exhibit 13, in particular
- 13 Section 3, where it says prepayment allowed.
- 14 And the first sentence says, may or -- pardon
- 15 me, maker may prepay in whole or in part the unpaid
- 16 principal or accrued interest of this note.
- Do you see that, sir?
- 18 A. Yes, I see that.
- 19 Q. In your experience, can someone prepay
- 20 accrued interest?
- 21 MR. MORRIS: Objection to the form of the
- 22 question.
- THE WITNESS: The document reads, maker may
- 24 prepay in whole or in part the unpaid principal or
- 25 accrued interest of this note. So I read that to say

- 1 that's a little bit of a mental jumble.
- 2 Q. Exactly.
- 3 A. Well, what I'm...
- 4 Q. To me one pays accrued interest. But this
- 5 note says you can prepay accrued interest. So I'm just
- 6 seeing whether you as a CPA, CFO and controller for
- 7 years agrees that one can prepay accrued interest?
- 8 MR. MORRIS: Objection to the form of the 9 question.
- 10 THE WITNESS: Frankly, I don't know if it's
- 11 possible. That's not how I'm seeing it applied here,
- 12 based on the quick review of Exhibit 14.
- Q. (BY MR. RUKAVINA) Well, the next sentence
- 14 says, any payments on this note shall be applied first
- 15 to unpaid accrued interest hereon, and then to unpaid
- 16 principal hereof.
- Do you see that, sir?
- 18 A. I see that.
- 19 Q. Do you have any understanding based either on
- 20 your personal knowledge or in your expertise as a CPA
- 21 and a CFO as to what that sentence means?
- MR. MORRIS: Objection to the form of the question.
- 24 THE WITNESS: The way that I would read that
- 25 would be that for a payment, for example, pick a date,

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- 1 Exhibit 14 again, the \$2.1 million payment on or about
- 2 June 19. I see that a payment was made.
- 3 And it was -- it appears that there was
- 4 accrued and unpaid interest at that time of 66,000. And
- 5 so the first 66,000 was applied to outstanding accrued
- 6 interest, to bring the balance to zero.
- And the difference between that 66,000 and the
- 8 2.1 million was applied to principal.
- 9 Q. (BY MR. RUKAVINA) Do you believe, whether
- 10 from personal knowledge from this note, Exhibit 13, or
- 11 your experience at Highland or as a CPA, that one can
- 12 say that interest, accrued interest will be due on a
- 13 future date, it will accrue by that date, but I'm going
- 14 to pay it earlier as of that date?
- MR. MORRIS: Objection to the form of the
- 16 question.
- 17 THE WITNESS: If I can rephrase back to you
- 18 just so I make sure I'm understanding the question.
- 9 You're saying could someone say, I would like to prepay
- 20 interest into the future. It hasn't accrued yet, but
- 21 it will be accrued by end of year.
- 22 And I would like to be prepaid effectively
- 23 with respect to that interest, and then have the
- 24 remainder used to pay down principal.
- 25 The question is, can someone do that?

- 1 believe that has been done in a specific circumstance.
- Q. So at least at Highland, you would believe
- 3 that that phrase, prepaying accrued interest, had some
- 4 established meaning at Highland?
- 5 MR. MORRIS: Objection to the form of the
- 6 question.
- 7 THE WITNESS: No, I don't agree with that.
- 8 Q. (BY MR. RUKAVINA) Okay. You understand, of
- 9 course, that it's Highland's position that with respect
- 10 to this note, a payment was due on December 31 of 2020
- 11 that wasn't made; correct?
- 12 A. Yes, it's my understanding -- if I can state
- 13 it back just so I make sure I'm getting it correctly.
- 14 It's my understanding that there was a payment due on
- 15 December 31, 2020, that wasn't made timely, yes.
- 16 Q. Okay. Do you know why that payment wasn't 17 made timely?
- 18 A. By recollection, because Mr. Dondero had
- 19 directed people not to process payments from Highland
- 20 affiliates to Highland.
 - Q. When did you learn of that?
- 22 A. Early December 2020.
- 23 Q. How did you learn of that?
- 24 A. I don't specifically remember the
- 25 conversation, but I know I had conversations with both

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- 1 Q. (BY MR. RUKAVINA) Yes.
- 2 MR. MORRIS: I object to the question.
- 3 THE WITNESS: I suppose it's possible, but
- 4 that certainly wasn't the practice if that makes sense.
- 5 Q. (BY MR. RUKAVINA) That does make sense. I'm
- 6 still struggling, and again, I'm not trying to be a
- 7 smart aleck. I'm still struggling with the first
- 8 sentence of paragraph 3, that maker may prepay accrued
- 9 interest.
- 10 And it sounds like to me like you don't
- 11 necessarily have a definitive answer as to what that
- 12 might have meant either.
- MR. MORRIS: Objection to the form of thequestion.
- 15 THE WITNESS: I think the document speaks for
- 16 itself in that sentence.
- 17 Q. (BY MR. RUKAVINA) But have you seen
- 18 something like this, to your recollection, in other
- 19 Highland promissory notes?
- 20 A. Something like what?
- 21 Q. Prepaying accrued interest.
- 22 A. Yes, I have seen that.
- Q. What's your memory? Where have you seen
- 24 that?
- 25 A. I can't remember a specific note, but I

1 Kristin and Frank. I can't remember if those were

- 2 individual or collective, but we understood that to be
- 3 the marching orders.
- 4 Q. Did you hear Mr. Dondero say anything like
- 5 that?

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- 6 A. I did not.
- 7 Q. Did Mr. Waterhouse tell you that Mr. Dondero
- 8 said something like that to him?
- 9 A. Yes.
- 10 Q. Okay. Separately, do you remember whether
- 11 Ms. Hendrix told you that Mr. Waterhouse told her that,
- 12 or would it have been kind of at the same meeting?
- 13 A. I don't remember specifically. It would have
- 14 been all around the same time.
- 15 Q. And to the best of your recollection, what
- 16 words -- strike that.
- 17 To the best of your recollection, did
- 18 Mr. Waterhouse include a reference to promissory notes
- 19 and the Advisors when he said that Dondero told him not
- 20 to make payments?
- 21 MR. MORRIS: Objection to the form of the
- 22 question.
- 23 THE WITNESS: I don't remember the specific
- 24 words that Mr. Waterhouse used. My clear impression
- 25 was that it was a very global instruction.

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55 53 1 And I should clarify also that, you know, at 1 analysis, right or wrong, suggested that the Advisors 2 this time, I think as we covered in my background. 2 had made large overpayments? 3 MR. MORRIS: Objection to the form of the 3 At this point I had assumed the chief 4 accounting officer role, so I wasn't necessarily in 4 question. 5 5 the -- in as much of the chain of command as I had been THE WITNESS: No, that's incorrect. previously to taking that role, where that sort of thing 6 Q. (BY MR. RUKAVINA) Why is that incorrect? 7 might have come from Frank, to me, to Kristin. A. Because by recollection, to the best of my 8 8 recollection, that analysis didn't occur until after By this time, Frank and Kristin were 9 communicating and I was sometimes in the loop, sometimes Dondero had told Frank no more payments. 10 not. 10 Q. Is that the only reason why you might suspect 11 Q. (BY MR. RUKAVINA) Did Mr. Waterhouse tell 11 that what I just said was incorrect? 12 you why Dondero had told him that? 12 MR. MORRIS: Objection to the form of the 13 A. I don't remember with any specificity. 13 question. 14 However, my perception at the time was that at this 14 THE WITNESS: Yeah, I don't know how to 15 time the relationship between Mr. Dondero and Mr. Seery 15 answer that. Q. (BY MR. RUKAVINA) I'm going back, when I 16 was hopelessly broken, and that this was Jim Dondero, 16 17 asked you, did Waterhouse tell you why Dondero gave the you know, gearing up for a fight in the future. Q. Prior to December of 2020, had you prepared a direction, you said no. 19 report showing potential overpayments that NexPoint and 19 MR. MORRIS: Objection to the form of the 20 HCMFA had made on account of shared services and 20 question. 21 payroll reimbursement? 21 THE WITNESS: Sorry, I'm not sure. If I 22 MR. MORRIS: Objection to the form of the 22 could have the question asked again, I'd be happy to 23 question. 23 answer. 24 You can answer. 24 Q. (BY MR. RUKAVINA) I'll ask it again. 25 THE WITNESS: I know the analysis that you're 25 Mr. Waterhouse tells you that Mr. Dondero 54 56 1 basically said no more payments; right? 1 talking about. I would not characterize it the way 2 that you characterized it. Q. (BY MR. RUKAVINA) And we'll talk about this 3 Q. And, but he did not tell you why Mr. Dondero 4 more in November, so I really don't want to go into any 4 said that? 5 detail, unless you feel the need to. 5 A. Not that I can recall. 6 But, so you did not prepare that analysis? O. So he might have? 7 MR. MORRIS: Objection to the form of the 7 A. He might have. I don't specifically 8 question. 8 THE WITNESS: I prepared an analysis that Q. Do you recall asking him or anyone else why 10 differed from how you described it. 10 Dondero would have said that? 11 Q. (BY MR. RUKAVINA) How would you describe it, 11 MR. MORRIS: Objection. Asked and answered. 12 in a nutshell? 12 THE WITNESS: I don't recall specifically 13 asking. A. I would describe it as I was asked to refresh 14 a spreadsheet using certain assumptions, based on the 14 Q. (BY MR. RUKAVINA) Do you recall telling 15 direction of Frank Waterhouse, and I updated and I sent 15 Mr. Seery that Dondero said anything like that? A. At what point in time? 16 him an email. 16 Q. Do you have any understanding that that 17 Q. Prior to December 31, 2020. 18 analysis was then shared with Mr. Dondero by 18 A. No, I did not. I did not say that to 19 Mr. Waterhouse? 19 Mr. Seery. 20 A. I know that now. I didn't know that at the 20 Q. In your mind was there any present 21 time. 21 understanding or concern that NexPoint therefore 22 Q. Do you have any understanding -- strike that. 22 wouldn't make a scheduled December 31, 2020, payment? 23 Did you have any understanding that as of 23 A. Was there any concern that they wouldn't?

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O. Yeah.

A. I would never use the word "concern." At

Appx. 03195

24 early December 2020 the reason why Mr. Dondero said

25 what he said to Mr. Waterhouse was because that

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- 1 that point I wasn't even on the team anymore, so I hate
- 2 to say it's other people's problem, but I had my hands
- 3 full with plenty of other things. It wasn't something
- 4 I was thinking about.
- Q. Do you remember here today that prior to
- 6 December 31, 2020, you believed that NexPoint would not
- 7 make the scheduled payment?
- 8 MR. MORRIS: Objection to the form of the
- 9 question.
- 10 THE WITNESS: I had no idea whether NexPoint
- 11 was going to make the payment.
- 12 Q. (BY MR. RUKAVINA) Were you asked prior to
- 13 December 31, 2020 by Mr. Seery or anyone else as to
- 14 whether NexPoint was going to make that payment?
- 15 A. Was I asked by Mr. Seery? Not that I can
- 16 remember.
- 17 Q. Prior to December 31, 2020, do you recall any
- 18 discussion with Mr. Seery about the NexPoint note?
- 19 MR. MORRIS: I'm sorry, can I have the
- 20 question again.
- Q. (BY MR. RUKAVINA) Prior to December 31,
- 22 2020, do you recall any discussion that you had with
- 23 Mr. Seery about this NexPoint note?
- A. Not that I can remember. If there was, it
- 25 would have been in a cash meeting, but I don't remember

- 1 and change payment?
- 2 A. Yeah, I'm aware that that payment happened.
- 3 Q. When did you become aware of that payment?
- 4 A. I think after it happened.
- 5 Q. Can you tell us, was it days, weeks, months
- 6 later?
- A. It was that day. And if I can expand, I
- 8 recall getting an email, seeing a large inflow to
- 9 Highland, to MLP because I was on an email distribution
- 10 list that had those payments.
- 11 And I think I emailed or called Kristin and
- 12 asked her, is this the NexPoint note, because it was a
- 13 large amount of money. And she said yes.
- 14 Q. Did she tell you anything more about that
- 15 payment, when it had been made, why, who authorized it?
- 16 A. I had that information of when it had been
- 17 sent. I had a wire confirm.
- 18 Q. Only important thing to you is where did that
- 19 money come from?
- 20 A. It wasn't important to me. It was more
- 21 curiosity.
- Q. Did you have any discussions with anyone on
- 23 or about that time, January 14, 2021, as to why
- 24 NexPoint made that payment?
- 25 A. Not that I can remember.

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- 1 at all.
- 2 Q. So it might have been some detail as part of
- 3 a larger discussion, but you don't remember any
- 4 specific discussion just around this note?
- 5 A. No.
- 6 Q. When did you learn or how did you learn that
- 7 the December 31 payment had not been made?
- 8 A. I'm not sure, but certainly after
- 9 December 31.
- 10 Q. Do you recall if it was before or after
- 11 **January** 7?
- 12 A. I think it was after.
- 13 Q. The default letter from Highland is in here,
- 14 if you need to see it. I'm just telling you it's the
- 15 January 7.
- 16 Do you recall having any role with respect to
- 17 drafting the default letter that went out to NexPoint
- 18 after the failed payment?
- 19 A. No, none that I can remember.
- Q. How do you recall learning that the note had
- 21 been called by Highland?
- 22 A. I honestly don't remember. I think after the
- 23 fact. I couldn't tell vou how far after the fact.
- Q. Are you aware that on or about July -- I'm
- 25 sorry, January 14, 2021 NexPoint made a \$1.4 million

- 1 Q. Did you have any discussion with anybody on
- 2 or about that time, January 14, 2021, as to how HCMLP
- 3 should account for that payment?
- A. No.
- Q. Did you have any discussion with Mr. Seery at
- 6 all about whether that payment should or shouldn't
- 7 reinstate the note?
- 8 A. No discussion that I can remember.
- Q. Is it fair to say that any of those
- 10 considerations would have been at that point in time
- 11 above your paygrade?
- MR. MORRIS: Objection to the form of the
- 13 question.
- 14 THE WITNESS: Yeah, paygrade, I don't know
- 15 how to respond to that. Like I said before, I wasn't
- $16\,\,$ on the team at that point. I wouldn't have been
- 17 involved in that determination regardless of my
- 18 compensation.
- 19 Q. (BY MR. RUKAVINA) So you know and you
- $20 \quad remember \ that \ in \ early \ December \ 2020 \ Frank \ Waterhouse$
- 21 told you that Dondero had directed no more payments by
- 22 the Advisors. And you know that a payment was made on
- 23 January 14.
- 24 And that's pretty much the extent of your
- 25 knowledge about the missed December 31 payment?

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1 MR. MORRIS: Objection to the form of the

2 question.

THE WITNESS: Yeah, it's a very broad 3

4 question. In general terms, yes.

5 Q. (BY MR. RUKAVINA) Well, I'm not asking what 6 you learned since then.

I'm asking that as of, let's say, January 15,

8 2021 that would have been the extent of what you would

have known?

10 A. Correct. And if I can just restate and make

11 sure I understand what I'm saying.

12 It would have been my understanding that we

13 had had an instruction -- when I say "we," Kristin and

14 Frank and by default the whole corporate team -- not to

15 make payments from these affiliated entities.

16 To my knowledge, none of those payments had

17 occurred since that point. And then on or about

18 January 14, such a payment was made and I found out

about that by seeing a wire confirm.

Q. Well, you mentioned a couple times that you, 20

21 in December 2020, you weren't part of that group

22 anymore. So do you have any understanding as to why

23 Mr. Waterhouse would have told you in particular, you

24 being Mr. Klos, about that instruction from Dondero?

1 meetings, even if it was almost in a nominal role,

2 because of some of my history that I had. So I was

I've worked closely with Kristin for a long 5 time, so I may have caught up with her informally. But

6 as far as day-to-day duties, I wasn't part of that team

A. Sure. I still was participating in cash

3 still participating in those meetings.

Q. Do you remember any discussion at that

2 approximate point in time for your cash meetings or

anything else as to whether NexPoint had made any

prepayments on the promissory note?

5 MR. MORRIS: Objection to the form of the

6 question.

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7 THE WITNESS: Yeah, it's very hard to -- by

8 the way, I've said yeah a few times. I want to make

clear that that's just --

Q. (BY MR. RUKAVINA) That's not a yes?

A. I apologize for that.

12 Q. Understood. Yeah means, it's not a yes.

MR. MORRIS: It's a pause; it's an um.

14 Q. (BY MR. RUKAVINA) Germans call it flavoring 15 particle.

16 A. Sorry, I got lost there. If you can ask

17 again.

18 Q. Yeah. Do you recall in November or

19 December 2020 in your weekly meetings or anything else,

20 any discussion whatsoever concerning whether NexPoint

21 had made any prepayments on its note?

22 A. No discussions of whether or not there had

23 been a prepayment that I can remember, no.

24 Q. To the best of your knowledge sitting here

25 today -- strike that.

1 For my next question, again we're assuming 2 that Exhibit 14 is what it appears to be.

A. Sure, sure.

4 Q. So with that qualification, to the best of

5 your knowledge, other than what's on Exhibit 14, can

6 you think of any other record or source or document

7 that would address whether any unscheduled payments by

NexPoint would or wouldn't be prepayments on the note?

9 MR. MORRIS: Objection to the form of the

10 question.

11 THE WITNESS: Again, with the struggle of the

12 prepayment, this is the document that I would expect to

13 explain how the payment was applied.

Q. (BY MR. RUKAVINA) But you yourself did not

15 play any role in deciding how the payment would be

16 applied?

17 A. I'd hesitate to say no role, because the team

18 ultimately rolls up to me.

19 Q. You personally?

20 A. Me personally, I wouldn't have prepared these

21 schedules.

22 Q. Or decided, you personally, as Mr. Klos, how

23 any unscheduled payments should be accounted for by

24 Highland?

A. Correct, not without some -- some

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Q. And is it your, did I understand you correctly, is it your testimony that Mr. Waterhouse

10 informed the whole accounting group there, the

11 corporate accounting group, of Mr. Dondero's

12 instruction?

7 anymore.

13 A. I don't know specifically who he told, if he

14 told every single member of the team, but he certainly 15 told Kristin and Kristin was the head of the team.

16 Q. And you don't recall anyone, after you heard

17 about that instruction, raising any concern to the

18 effect that NexPoint is going to default and be in

19 trouble if that payment isn't made?

20 A. I don't remember any discussion to that

21 effect.

22 Q. Do you remember anyone suggesting that they

23 ought to try to dissuade Mr. Dondero from that

24 direction?

25 A. Not that I can remember.

67 65 1 authoritative direction on how they should be applied. 1 Q. (BY MR. RUKAVINA) Are you familiar with 2 O. And that authoritative direction would have 2 Exhibits 1 and 2, sir? 3 come from Mr. Waterhouse or Mr. Dondero? A. Yes, I am. A. That's what I would expect. 4 Q. Do you remember them from back -- strike 5 that. Q. Could it have come from anyone else that you 6 can think of here today? 6 Did you have any role, to your knowledge, A. Not that I can think of. 7 with the preparation of Exhibits 1 and/or 2? A. With the preparation of the documents? 8 8 Q. Now we're going to switch gears and I think 9 9 we're going to stop discussing the NexPoint note, and Q. Yeah. 10 10 we're going to focus on the HCMFA two promissory notes. A. No. 11 11 Q. But you did have some role with these 12 promissory notes? 12 Q. So we're going to go back in time to 13 A. Yes. 13 May 2019; okay? 14 Q. And I'm trying to find that email as well. 14 A. Sure. 15 Q. And is it fair to say by -- that by May 2019 15 There's an email here from you. I'll have it in a 16 moment. That will help frame the question. 16 there were at least dozens if not hundreds of instances MR. MORRIS: Exhibit 3. 17 of intercompany loans in the years leading up there 17 18 Q. (BY MR. RUKAVINA) Do you recall that email, from Highland to one of the other entities? 19 sir? 19 MR. MORRIS: Objection to the form of the 20 A. Not specifically, but it's right in front of 20 question. 21 me. I'm certain that I wrote this email. 21 THE WITNESS: From Highland to one of the 22 Q. You have no reason to deny or reject its 22 other entities. Can you help with other entities. 23 authenticity? 23 Q. (BY MR. RUKAVINA) Advisors, the trusts, any 24 A. I have no reason to reject it or question it. 24 of the Dondero entities? 25 Q. Just give me a second. I don't understand 25 MR. MORRIS: Objection to the form of the 66 68 1 question. 1 what's going on with my exhibits. I just don't 2 THE WITNESS: Yes, there would have been many 2 understand this. 3 loans over the years. 3 (Off the record.) Q. (BY MR. RUKAVINA) And do I understand that 4 Q. (BY MR. RUKAVINA) You have Exhibit 3 in 5 most, if not all, of those loans should have been 5 front of you? 6 papered up with a written promissory note? A. I do. 7 7 Q. And it says, please send 2.4 million from MR. MORRIS: Objection to the form of the 8 HCMLP to HCMFA. This is a new interco. THE WITNESS: Should have been. To the Meaning intercompany; right? 10 extent that they were for a promissory note, then yes. 10 A. Correct. Q. (BY MR. RUKAVINA) So in the May 2019 time 11 O. This is a new intercompany loan. 12 frame, was there a regular pattern or course or 12 Who told you that this was an intercompany 13 procedure in place as to how a promissory note would be 13 loan? physically prepared and presented for approval? 14 A. Either Frank or Jim. I would suspect Frank. 15 MR. MORRIS: Objection to the form of the 15 Q. Do you have any present memory of him telling 16 question.

17 THE WITNESS: Yeah, when you say a process, 18 can you please clarify that for me.

Q. (BY MR. RUKAVINA) Sure. Let's look at these

20 two promissory notes and maybe that will help frame the

21 question. And I apologize for not having them right

22 here.

23 A. It might be --

24 MR. MORRIS: 1 and 2.

25 MR. RUKAVINA: Yes. 16 you that with respect to this particular loan? A. I don't have a specific recollection, but 17 18 with a hundred percent certainty he or Jim would have 19 directed that. Q. Would they have directed the payment, or 20 21 would they have directed that it be papered as a loan, 22 or both? 23 24 Q. So in each instance -- well, let's take a 25 step back.

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69 71 1 So certainly either Jim or Frank directed you 1 within that fund. 2 to transfer the \$2.4 million; correct? Q. Who made that NAV error? A. Either Jim or Frank would have directed, yes. 3 MR. MORRIS: Objection to the form of the 3 4 There's 0 percent chance I would have sent this email 4 question. 5 if I didn't feel a hundred percent confident that this THE WITNESS: Yeah, it's hard to answer that. 6 was authorized in the way that I described in the 6 So the Highland Capital Management Fund Advisors is the 7 advisor to the fund, so they're the responsible party 8 Q. But can you also say with certainty that 8 for making the fund whole in the instances of NAV 9 either Dondero or Waterhouse also told you that this 10 transfer is an intercompany loan? 10 Q. (BY MR. RUKAVINA) And did HCMFA contract out 11 A. With a hundred percent certainty, yes. I 11 with Highland for valuation services? 12 can't say that necessarily with respect to Dondero, 12 MR. MORRIS: Objection to the form of the 13 because I don't remember if I would have talked to him 13 question. 14 specifically about it. But, yes, this would have been 14 THE WITNESS: I don't specifically remember 15 clear that it's a loan. 15 if they contracted for valuation services, but if you O. You say clear. Did someone tell you that 16 tell me that they did, I'll take that at face value. 17 it's a loan, or are you just, because of the prior 17 So yes, HCMFA utilized HCMLP for valuation services. 18 10 years of course and conduct, logically deciding that Q. (BY MR. RUKAVINA) Do you have any memory of it has to be a loan? what human being or beings made that NAV error? 20 MR. MORRIS: Objection to the form of the 20 MR. MORRIS: Objection to the form of the 21 question. 21 question. 22 THE WITNESS: So this is -- this is not just 22 THE WITNESS: It's -- in respect to people, 23 a situation of past practice. I would have known with 23 not particularly. In respect to parties, Houlihan certainty that this was a loan and that's what was 24 Lokey was the service provider that performed the 25 authorized. 25 valuation that resulted in the NAV error. 70 72 Q. (BY MR. RUKAVINA) How would you have known And as I described before, the valuation 2 with certainty that it was a loan? 2 function was housed at HCMLP by HCMLP employees A. I'll say in part because of past practice, 3 supporting that through, among other people, front 4 but also because of the nature of what the money was 4 office, compliance, other parts of the organization as going to be used for, and the background behind it. 5 well. Q. (BY MR. RUKAVINA) So it was your Q. So you knew that nature and that background? 7 7 understanding that Highland was loaning \$2.4 million to A. The nature and background of the 2.4 million, 8 yes. 8 HCMFA for HCMFA to compensate that fund? 9 Q. So you've told me that in part -- I asked you A. Yes. 10 10 how did you know it was a loan. You said in part past Q. Did you have any understanding that Highland 11 practices, in part you knew the nature. Anything else? 11 might have been, instead of loaning that money, A. I'm certain that given that I wrote this 12 actually paying that money to HCMFA to compensate HCMFA 13 for Highland's valuation error? 13 email, which Frank is on, that I would have had a conversation with Frank about what this was. 14 A. First, not Highland's valuation error. But Q. Was Jim Dondero in the corporate accounting 15 second, no, there's no way that that would have been 16 email? 16 what that payment was for. 17 17 Q. Why can you say that there's no way that that A. No, he wasn't. 18 would have been what that payment was for? 18 Q. So what is your understanding as to what this 19 \$2.4 million was for? 19 A. First, this wasn't the first NAV error that A. This related to -- well, to separate the 20 ever occurred. There had been other NAV errors. There

21 transaction, the 2.4- itself relates to a promissory 21 were other NAV errors with respect to this valuation 22 note. That's what was executed. 22 that pertain to NexPoint Advisors. There was no reimbursement from HCMLP to

23 HCMFA's use of the 2.4 million was to 23 24 reimburse a fund that it managed called Highland Global

25 Allocation Fund for a NAV error that had occurred

24 NexPoint or HCMFA, regardless of any individual being 25 identified as the person. That had just never occurred

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1 to my knowledge.

- 2 Second, the amount was to meet the liquidity
- 3 need of HCMFA. It wasn't to -- it wasn't to
- 4 dollar-for-dollar make up for the NAV error. It was
- 5 that's how much money HCMFA needed.
- Third, it was definitely Dondero's practice
- 7 and preference to have expenses at HCMFA for tax
- 8 purposes. So if this was compensation, he would
- ultimately not really be benefiting from the deduction
- 10 so.
- 11 That would have been a strong preference of
- 12 his against having it be compensation.
- 13 So it would have been excruciatingly clear
- 14 that this was a loan for liquidity for HCMFA to make
- 15 the fund whole, just like it had in the past NAV
- 16 errors.
- **17** Q. How did you know that HCMFA needed
- 18 \$2.4 million for liquidity?
- A. At that point I was still part of the
- 20 corporate team, so I had a good sense of how much cash
- 21 HCMFA would have had at any given moment. And at that
- given moment it would not have had -- I'd be shocked if
- 23 it had even 2.4-.
- 24 Probably would have had probably between
- 25 a million and 2 million if I had to speculate.

- 1 HCMFA for the liquidity. HCMFA made the payment to the
 - 2 fund. It wasn't dollar for dollar. I think it was
 - 3 like 5,019,000, or some such number.
 - But 5 million was the number that would allow
 - 5 it to make that payment effectively to the investors of
 - 6 Global Allocation Fund.
 - Q. Do you have any understanding as to why
 - 8 Highland, as opposed to some other entity, was
 - transferring \$7.4 million?
 - A. Highland as opposed to some other entity?
 - 11 Q. Uh-huh.

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- A. Because Highland had the money. 12
- 13 Q. But I think we've established earlier that in
- 14 the first seven months of 2019, Highland was having
- 15 constant liquidity issues?
- 16 A. It was.
- 17 Q. And that's part of the reason that NexPoint
- 18 was making unscheduled payments on its note; right?
 - A. That's part of the reason NexPoint was making
- 20 unscheduled payments on its note, yes.
 - Q. So your recollection is that HCMFA needed
- 22 \$2.4 million for liquidity purposes and about
- 23 \$5 million for the consent fee. And Highland
- 24 transferred those funds because Highland had the funds?
- A. Yes. And I should clarify that Highland only

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- 1 Q. Okay. So you've given the reasons why this 2 was clearly a loan.
- 3 But you never heard Mr. Dondero say that this
- 4 was a loan, did you?
- 5 A. I don't remember. It's possible I did, but I
- 6 don't specifically remember.
- Q. Okay. What about the \$5 million loan on the
- day after? What was that \$5 million for?
- A. That was similar but different. So again,
- 10 HCMFA needed liquidity. This time this was for --
- 11 related to that same fund.
- 12 So Highland Global Allocation Fund had
- 13 converted from an open-end fund, mutual fund, to a
- 14 closed-end mutual fund.
- 15 And pursuant to that conversion there was a,
- 16 I believe it was called a consent fee, for any
- 17 investors of that fund who consented to the conversion,
- 18 that they would receive a 3 percent fee payable by the
- 19 investment advisor.
- 20 And so at this time the bill came due on that
- 21 because the conversion had been completed, and the
- accounting for how much that 3 percent was going to be
- 23 was complete.
- 24 HCMFA sure as hell didn't have 5 million
- 25 bucks. Excuse my language. Highland needed to pay

- 1 had the funds because Mr. Dondero repaid personal notes
- 2 to HCMLP on the same days.
- So he paid 2.4 million on May 2, which
- 4 Highland turned around and reloaned. And he paid 4.4-
- 5 on May 3, and Highland sent out 5-, so there's a
- 6 \$600,000 difference. And my recollection, he paid the
- other 600,000 via note repayment within a few days.
- Q. So this would have been part of some broader
- 9 transaction in Mr. Dondero's mind?
- 10 A. I would not characterize it that way.
- 11 Q. You established that HCMFA needed money. You
- 12 established that Highland temporarily had money because
- 13 Dondero provided it with money.
- But you still don't know, sir, as a fact as
- 15 to whether that transfer was a loan or some other
- 16 payment from HCMFA -- I'm sorry from HCM, from debtor
- 18 MR. MORRIS: Objection to the form of the
- 19 question. Asked and answered a million times. It's in
- the documents you're showing him.
- 21 THE WITNESS: It was a loan.
- MR. MORRIS: Come on, Davor. With all due 22
- 23 respect, it's in the document. It's on the document.
- Q. (BY MR. RUKAVINA) I'm being courteous and 24
- 25 respectful to you and I'd ask the same in return; okay?

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- 1 A. Absolutely. I apologize if I haven't been.
- 2 Q. Mr. Dondero, would you agree, was the only
- 3 person that had the authority at the debtor to
- 4 authorize a transfer of 2.4- and then \$5 million?
- 5 A. At the debtor?
- 6 MR. MORRIS: Objection to the form of the7 question.
 - Q. (BY MR. RUKAVINA) Yes, at the debtor.
- 9 A. No.

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- 10 Q. Who else could have transferred 2.4 million
- 11 or \$5 million?
- 12 A. Those are two different questions. But if
- 13 you're asking who had the authority, certainly Frank
- 14 did as well.
- 15 Q. So Frank had the authority. Perhaps my
- 16 question was inartful.
- 17 Do you believe that Mr. Waterhouse would have
- 18 decided to transfer \$2.4 million or \$5 million without
- 9 Mr. Dondero's approval?
- 20 MR. MORRIS: Objection to the form of the
- 21 question.

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- THE WITNESS: Generally speaking, no, but I
- 23 don't know exactly what the form of the approval. But
- 24 he certainly wouldn't have done that on his own without
- 25 discussing with Dondero.

- 1 into the note on behalf of HCMFA, yes.
 - Q. (BY MR. RUKAVINA) Was that something that he
 - 3 would have done without Mr. Dondero's approval to your
 - 4 understanding and practice at that time?
 - 5 MR. MORRIS: Objection to the form of the
 - 6 question.
 - THE WITNESS: Same answer that I gave before
 - 8 with respect to Highland.
 - 9 Q. (BY MR. RUKAVINA) So here's where I'm going 10 with all this.
 - 11 Mr. Dondero's position, and tomorrow his
 - 12 testimony will be, that he caused the \$7.4 million to
 - 13 be transferred not as a loan to HCMFA, but to
 - 14 compensate HCMFA for various things including that NAV
 - 15 error.
 - 16 Other than perhaps you think he's lying,
 - 17 would you have any knowledge, hearsay, document,
 - 18 anything, to contradict Mr. Dondero's position?
 - 19 MR. MORRIS: Objection to the form of the
 - 20 question.
 - 21 THE WITNESS: Yes. I would point to the fact
 - 22 that as it pertains to the \$5 million note, if we're
 - 23 separating issues, there's no other possibility of what
 - 24 that money could be other than either a loan or equity.
 - 25 It's not compensation. Highland is under --

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- Q. (BY MR. RUKAVINA) Do you believe that
- 2 Mr. Waterhouse had the ability on behalf of the debtor
- 3 to loan \$5 million without Mr. Dondero's approval?
- 4 MR. MORRIS: Objection to the form of the 5 question.
- 6 THE WITNESS: I think he had the technical
- 7 authority to. However, I don't believe in practice
- 8 that he ever would.
- 9 Q. (BY MR. RUKAVINA) Same question, \$2.4
- 10 million?
- 11 A. Same answer.
- 12 Q. We've established that you never really had a
- 13 direct employment or types of a role for NexPoint --
- 14 I'm sorry, for HCMFA; right?
- 15 A. Again --
- 16 Q. To the best of your recollection?
- 17 A. Best of my recollection I can't remember how
- 18 the titles transferred over or whatever, but I don't
- 19 believe I did.
- 20 Q. Do you know whether Mr. Waterhouse in 2019
- 21 had the authority, without Mr. Dondero's approval, to
- 22 borrow \$7.4 million on behalf of HCMFA?
- 23 MR. MORRIS: Objection to the form of the
- 24 question.
- 25 THE WITNESS: He had the authority to enter

- 1 HCMLP has absolutely zero obligation in respect to that
- 2 consent fee. So when Highland sends \$5 million to HCMFA
- 3 there's nothing else that it can be. That's Point 1.
- 4 Point 2, we're right in the middle of an audit
- 5 at this point. Jim signs rep letters at this point.
- 6 He's being provided balance sheets throughout 2019 that
- 7 indicate the loans that Highland has on its books.
- 8 Balance sheets are being prepared in respect
- 9 of annual approvals for 15(c) for retail funds in the
- 10 fall. Schedules are being created for bankruptcy after
- 11 we file in October.
- Nobody says this is a mistake. Frank is on
- 13 all of these emails. Frank never questions it.
- 14 There's absolutely no evidence from that point
- 15 in time to whenever this defense got raised that would
- 16 indicate that anybody said that these weren't exactly
- 17 what they say they are.
- 18 Q. (BY MR. RUKAVINA) Are you aware that in
- 19 February or March 2019 some \$5.2 million was paid from
- 20 insurance that HCMFA had to the fund for the NAV error?
- 21 A. The amount sounds unfamiliar, but I'm aware
- 22 that insurance proceeds were paid from HCMFA to the
- 23 fund.
- Q. And do you think that it's impossible for a
- 25 sane, rational person to conclude that HCMFA had a

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81 1 claim against the debtor related to that NAV error? 1 A. Yes, I am. I believe Kristin sent that one. 2 MR. MORRIS: Objection to the form of the 2 Q. Kristin sent that one? 3 question. 3 A. I believe so. 4 THE WITNESS: If it did, I don't know how 4 O. To whom? A. Likely the same distribution group, but 5 that's not insurance fraud for basically double 6 collecting insurance proceeds and then collecting it 6 that's speculation. 7 Q. Did you see such an email in the last week or again. 8 two? 8 Q. (BY MR. RUKAVINA) So you believe, sir, that if insurance pays a claim you have no more right to go A. I'm not certain, but probably. I have seen 10 email communication on or around May 3, but I don't against a person who caused the fault? 11 know specifically who all was on the email. I'm going 11 MR. MORRIS: Objection to the form of the 12 question. 12 off what I would expect to see. 13 MR. MORRIS: If you're really interested, 13 THE WITNESS: We can speak specifically here. 14 it's right here. It was produced to you with 14 This is about a NAV error that an insurance company 15 reimbursed HCMFA for, which it then turned around and 15 Bates 3763. And if you'd like to question the witness. MR. RUKAVINA: When was it produced? 16 paid for the fund. 17 17 So if it went to collect that same, let's use MR. MORRIS: I can't tell you. It's part of 18 the same package. 18 round numbers, \$5 million from Highland that it's Q. (BY MR. RUKAVINA) So going back to this already collected from insurance, that sounds Exhibit 3, sir, why did you ask Kristin, can you or inappropriate to me. Hayley please prep a note for execution? Why them? 21 Q. (BY MR. RUKAVINA) Okay. But you don't know 22 Remember, I was asking about what the course 22 whether that's allowed in Texas law or not, do you? 23 or procedure was at that point in time. 23 MR. MORRIS: Objection to the form of the 24 A. Yeah, so nomenclature, procedure, process. 24 question. 25 I would say the informal process for these 25 THE WITNESS: No, I don't know whether it's

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1 allowed under Texas law.

Q. (BY MR. RUKAVINA) So you don't know that if 3 you're hit by someone on the street and your medical 4 insurance pays your bills, you don't know that he still

5 has to pay you for the same bills?

MR. MORRIS: Objection to the form of the 7 question. I hope I don't miss my plane.

Q. (BY MR. RUKAVINA) You don't know that under

Texas law if someone hits you with their car and causes

you medical bills and your medical insurance pays those

11 bills, that you can still sue them for the same

12 damages?

13 MR. MORRIS: Objection to the form of the 14

15 THE WITNESS: I'm not familiar at any level 16 of specificity with Texas law.

Q. (BY MR. RUKAVINA) Again, it just sounds

18 wrong to you that you could go after someone after

19 insurance pays, but you don't know legally one way or

20 the other?

21 A. Correct. I'm not a lawyer or expert in Texas

22 law. It feels wrong, yes.

Q. Okay. Going back to this email of yours,

24 Exhibit 3, do you recall whether there was a similar

25 email with respect to the \$5 million note?

1 types of loans, they were frequent in nature, would be

for someone on the corporate accounting team to prepare

a note and have it executed.

Q. Okay. That was the standard course back

5 then?

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A. Again, I don't know what standard course 6

means. That was fairly typical.

Q. Why would you not have asked someone in the

Highland legal department to prepare a note?

A. Because this was a legally reviewed document

11 as far as the form of the agreement. It's a one-page,

12 two-paragraph form that had been used for a long time.

So the only thing that would change with

14 respect to these notes would be the date, the amount,

15 likely the rate. I can't think of anything else

16 offhand that would have changed from note to note.

Q. After you asked Ms. Hendrix to prepare this

18 note, did you have any further role with respect to the

19 papering, preparation, or execution of that note?

A. Not that I can remember.

21 Q. Would you have had any role in having either

22 or both of the notes actually signed electronically or

23 by ink by Mr. Waterhouse?

24 A. Likely not, no.

Q. Do you know who decided to have

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22 (Pages 85 to 88)

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1 Mr. Waterhouse as opposed to Mr. Dondero sign these two

- 2 promissory notes? A. I don't. 3
- 4 Q. On the \$5 million note, do you remember if
- 5 you had any role with respect to its physical papering
- 6 or execution?
- A. Not that I recall.
- Q. To the best of your memory, your role would
- 9 have been done by instructing your team, hey, here is
- 10 these new loans, go paper it up; is that accurate?
- 11 A. On the upfront side. I suppose my role would
- 12 have also included on the back end making sure that the
- 13 actual payment had occurred. But that would have been
- 14 doing that realtime, seeing the funds went out, and
- 15 that, most importantly, that the consent fee had been
- 16 paid from HCMFA to the transfer agent.
- 17 Q. How did you or anyone on your team know -- so
- 18 obviously, you know it's a \$2.4 million loan because
- that's what Waterhouse or Dondero told you; right?
- 20 How did you know it was a \$2.4 million loan?
- 21 MR. MORRIS: Objection. Asked and answered.

what the interest rate in this note would be, or that

3 it would be a demand note as opposed to a term note?

A. I don't specifically know who made that 5 decision. However, the common practice for fund

6 advisors was to put -- was for the rate to equal the, I

And for the note to be demand, that was just

For either or both of these two notes, the

A. No, not that I can remember. I don't think I

Q. And you don't remember doing anything to get

Q. Nor would that have been something that you

A. Certainly not in this instance. Maybe to the

7 forget if it was the short-term or long-term AFR.

Q. And I think I asked this, but just if I

13 2.4- and \$5 million note, did you have any role with

respect to Mr. Waterhouse signing them?

21 would expect that you would have a role with?

23 extent that nobody else was around and it was time

24 sensitive, but that wouldn't have been the case with

the standard -- that was the standard.

- 22 THE WITNESS: I knew that the NAV error was
- 23 2 million, I think it was 398,000, somewhere in that
- 24 ballpark. And that 2.4- had been authorized for that
- 25 purpose.

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16 did.

18 his signatures?

25 these, I don't believe.

A. Not that I recall.

11 didn't. 12

- Q. Did you have any understanding in early May
 - of 2019 as to whether HCMFA was solvent or insolvent?
 - 3 MR. MORRIS: Objection to the form of the
 - 4 question.
 - 5 THE WITNESS: Whether HCMFA was solvent or
 - 6 insolvent? I'm not a solvency expert, so I don't know
 - that I could even attempt to answer that.
 - Q. (BY MR. RUKAVINA) Did you have an
 - understanding as far as HCMFA goes on May 2, 2019, that
 - 10 its liabilities exceeded its assets?
 - 11 A. I don't remember specifically where it stood
 - 12 on assets versus liabilities.
 - 13 Q. Do you have any memory that by May 2, 2019,
 - 14 the debtor had taken a couple prior demand notes from
 - 15 HCMFA and made them not collectible prior to May 31,
 - 16 2021?
 - 17 A. I know what you're referring to. I wouldn't
 - 18 characterize it that way.
 - Q. How would you characterize it?
 - 20 A. I recall that there was a financial support
 - 21 acknowledgment, I think it was the name of the
 - 22 acknowledgment.
 - 23 That described -- I can't remember if it
 - 24 described those two notes specifically or just referred
 - 25 to them, that there would not be collection sought on

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- Q. (BY MR. RUKAVINA) Do you know who decided 1 those until May 31 of 2021.
 - Q. Do you remember why that document was done?
 - 3 A. My recollection, and it could have been done
 - 4 for other reasons, but my recollection of it was that
 - 5 it was primarily audit-driven.
 - For the auditors to be comfortable that these
 - notes weren't going to be just called and FA not have
 - the ability to pay them right away.
 - Q. Because it's true in April or May of 2019
 - 10 HCMFA didn't have the ability to pay those notes;

 - 12 A. It didn't have enough cash to pay those.
 - 13 Q. And I think you mentioned before that in
 - 14 May 2019 the auditors at the Highland level were
 - 15 talking about rolling up prior demand notes into term
 - 16 notes so the debtor would at least get some regular
 - 17 cash flow; correct?
 - 18 MR. MORRIS: Objection to the form of the
 - 19 question.

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- 20 THE WITNESS: No.
- Q. (BY MR. RUKAVINA) So you recall that -- I'm 21
- 22 sorry, that was 2017. I was wrong; right?
- 23 A. Correct.
- Q. So I guess here is my question, and I'm 24
- 25 struggling to understand this.

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89 So why would Highland be loaning an 2 additional \$7.4 million in early May of 2019 to HCMFA 2 loan; correct?

4 to Highland? 5 MR. MORRIS: Objection to the form of the 6 question.

3 when HCMFA already was then unable to repay its debts

THE WITNESS: Yeah, I kind of reject the 8 premise of the question, and these are all controlled

9 by Jim. And it's completely within his power at any

10 point in time to make any payment on any of the loans,

11 depending on where priorities sit.

12 So the idea that HCMFA -- that Highland would

13 be doing a credit analysis on HCMFA, determining that it

14 was unable to make that payment and, therefore, this is

15 a bad note, is a completely foreign, preposterous

16 concept at that time.

17 Q. (BY MR. RUKAVINA) And in May of 2019 isn't

18 it also, sir, the case that Mr. Dondero could have,

19 right or wrong, agree or disagree, said, that 7.4- is

20 going to compensate HCMFA for the NAV error as opposed

A. As we discussed, the 5-, there's absolutely

3 error. It's not a NAV error. It's a consent fee.

4 Highland has absolutely no responsibility for that.

6 2.4-, but if you want to assume that it did, that's

7 completely not the practice. It was Jim's preference

2 no construct where that can be compensation for an NAV

Highland also has no responsibility for the

21 to being a loan?

22 A. No.

23 Q. That's not possible?

24 A. No.

5

25 Q. And why is that not possible? Q. (BY MR. RUKAVINA) So it had to have been a

3 MR. MORRIS: Objection to the form of the

4 question

THE WITNESS: In these instances I know it to

6 have been a loan.

Q. (BY MR. RUKAVINA) Because of what

8 Mr. Waterhouse told you?

MR. MORRIS: Objection to the form of the

10 question. Asked and answered.

THE WITNESS: Yeah, it was my understanding 11

12 that these were loans.

Q. (BY MR. RUKAVINA) You know these 7.4- to be

14 loans even though you never heard Mr. Dondero say that

15 to you?

A. Yes, although to be fair, I don't know

17 whether I ever heard Mr. Dondero. It's possible he did

18 say it.

19

MR. MORRIS: Objection. Withdrawn.

20 Q. (BY MR. RUKAVINA) You have no memory that on

21 or before May 4, 2019 you heard Mr. Dondero say that

22 the \$2.4 million transfer and/or the \$5 million

23 transfer to HCMFA were loans?

24 A. I have no specific recollection, but such a

25 conversation is just off the reservation impossible.

1 That there's no way -- there's no way -- there's no way

2 that it would have been described that way and there's

3 a hundred percent that it's loan.

Q. Do you have any memory discussing prior --

5 MR. MORRIS: Objection. Asked and answered.

6 He's answered this a thousand times.

Q. (BY MR. RUKAVINA) Do you have any memory on

8 or before May 2, 2019 discussing the \$2.4 million

9 transfer with Mr. Dondero at all?

A. I do recall, I don't remember the time, but I

11 do remember discussing the NAV error in general terms

12 and the potential magnitude of that. I don't remember

13 specifically when that occurred.

Q. At least in your discussion with Mr. Dondero,

15 the \$2.4 million loan or note was somehow linked to the

16 NAV error?

A. Linked to the NAV error is strong. It

18 related to the NAV error from the standpoint that

19 that's what Highland was loaning HCMFA the money for,

20 because HCMFA couldn't otherwise make the payment

21 itself.

22 Q. You just said Highland was loaning the money

23 for. Are you remembering now Mr. Dondero saying that

24 or are you just extrapolating?

A. No, I'm explaining rationally what the

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to do these via loans, and that's how it was booked. Q. You're saying on the one hand Mr. Dondero can 10 absolutely control that one entity make a loan to 11 another, irrespective of credit worthiness, but he 12 can't decide that a transfer is compensation as opposed 13 to a loan? 14 MR. MORRIS: Objection to the form of the 15 question. Argumentative. 16 THE WITNESS: If he wants to call 17 \$7.4 million compensation to himself or to HCMFA, I

just don't know how he does that. This is me being an 19 accountant. I don't know how that's possible.

20 If he wants to pay himself a \$7.4 million

21 bonus from HCMFA, fine, he has the power to do that. If

22 he wants Highland to inject 7.4 million of equity into

HCMFA, he has the power to do that.

But sending the 7.4 million and calling it

25 something else, I don't know how he could do that.

93 95 1 situation was. Q. So it's possible that Mr. Dondero told no one O. Do you remember on or before May 3, 2019 2 that these were loans but because y'all have been doing 3 discussing the \$5 million transfer with Mr. Dondero? 3 it this way for 10 years, that everyone, all of you A. Again, in general terms. I couldn't tell you CPAs, understood that it had to be a loan? 5 a time period, but this was something that, between 5 MR. MORRIS: Objection to the form of the 6 Frank and I, we had put on Jim's radar that this would 6 question. 7 be a cash need in the future. I couldn't specify 7 Q. (BY MR. RUKAVINA) My question is, is that 8 specifically when that happened. possible? Q. Okay. You have no present memory of A. I really don't think it's possible. I 10 discussing that issue with Mr. Dondero on or before 10 suppose people say anything is possible. Again, two 11 May 3, 2019? It must have happened but you have no 11 and a half years ago, I'm certain that that was the 12 memory? 12 intent at the time and I'm sure it was communicated as 13 MR. MORRIS: Objection to the form of the 13 such. I just don't have a specific recollection. 14 question. 14 MR. RUKAVINA: Thank you. 15 THE WITNESS: We discussed that there would 15 I'll pass the witness. 16 be a consent fee payable from HCMFA. We would have 16 MR. MORRIS: Michael, do you have any discussed -- and again, I don't remember where I was, 17 18 what day it was, the specifics around the conversation. MR. AIGEN: I do. I assume you want me to 18 19 But I know that we had conversations 19 start now to do my best to be done at 5:00? 20 pertaining to cash, because this was a large need for --20 MR. MORRIS: Yes, please. 21 cash need for HCMFA to satisfy this, and this was an 21 **EXAMINATION** 22 important payment. 22 O. (BY MR. AIGEN) Good afternoon, Mr. Klos. My 23 And neither HCMFA nor Highland had the 23 name is Michael Aigen with the Stinson law firm. I wherewithal to make that payment. The only way that represent Mr. Dondero, HCMS, and HCRE. 25 those could make the payment was by Jim Dondero repaying 25 How are you today? 94 96 1 loans that he owed to HCMLP. So we absolutely discussed 1 A. I'm very good, thank you. Q. First topic I wanted to ask you about is the 2 that with Jim Dondero. Q. (BY MR. RUKAVINA) And with respect to 3 defense raised by some of the defendants related to an 4 everything that we just talked about and your oral agreement and condition subsequent. 5 recollection, you still don't remember Mr. Dondero 5 So my question for you generally is, are you 6 saying to you or Mr. Waterhouse one way or the other 6 aware that some of the defendants in these proceedings 7 that one or both of these transfers were loans? have raised a defense that there was a subsequent oral 8 MR. MORRIS: Objection to the form of the agreement allowing notes to be potentially forgiven if 9 question. Asked and answered. 9 certain events occur? 10 THE WITNESS: Yeah, again --A. Yeah, I'm generally aware of the defenses 10 11 Q. (BY MR. RUKAVINA) Just yes or no. This is a 11 sitting here today. 12 yes-or-no question. 12 Q. And how are you generally aware of this 13 MR. MORRIS: Let him answer the question. 13 defense? 14 MR. RUKAVINA: If he'll answer the question 14 A. I don't know with specificity. Potentially 15 I'll stop asking him --15 through just document flow on the bankruptcy side, 16 MR. MORRIS: He's allowed --16 potentially with conversations internally or with 17 Q. (BY MR. RUKAVINA) The answer [verbatim] is, 17 counsel. But I generally understand them to have been

18 do you remember --

19 A. I don't remember Jim's exact words two and a half years ago in respect to authorizing these

payments. So to answer your question, no, I don't

specifically remember him saying these are loans.

23 But every other fact around this tells me

24 that we did have that conversation and that was the

25 conclusion and that was the direction.

18 raised, the defenses that is.

19 Q. And I don't want to get into conversations 20 with counsel. I'm not allowed to do that.

21 Let me ask you, have you had any

22 conversations with anyone other than counsel about this

subsequent oral agreement defense?

A. I have had general conversations with

25 Mr. Seery about it. And other than that, nothing

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1 substantive.

- 2 Q. And what did you discuss about this with
- 3 Mr. Seery?
- 4 A. I've discussed with him, I hate to phrase it
- 5 this way, the ridiculousness of the defense. Under
- 6 oath. I've discussed my general understanding of what
- 7 is being asserted as a defense.
- 8 Which is that there was some sort of an oral
- 9 agreement between Jim and his sister at some point in
- 10 the past pertaining to forgiveness of certain
- 11 promissory notes that was conditional upon Highland
- 12 monetizing any of three PE assets for any amount above
- 13 cost.
- 14 Q. And is it fair to say that prior to these
- 15 lawsuits being brought, you weren't aware of any oral
- 16 agreements related to the promissory notes related to
- 17 potential forgiveness?

3 trying to close that topic.

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25

in this, but nothing of substance.

14 whatever the terminology is.

A. Yeah, generally.

24 were due on December 31, 2020?

A. Yes.

- 18 A. That's correct. Not that I can remember, and
- 19 I think I would remember.
- Q. And other than your conversations with
- 21 Mr. Seery and counsel, you haven't had any
- 22 conversations with anyone else about these alleged oral
- 23 agreements; is that fair to say?
- 24 A. I'm not sure I understand the question.

1 counsel about these oral agreements defense, and you 2 told me about conversations with Mr. Seery, so I'm

Was there anyone else you had any conversations with about this alleged oral agreement?

A. Like I said before, nothing of substance.
 7 I've probably mentioned it in passing to other

8 employees, this is what I understand is being asserted

Q. Do you have any personal knowledge as to

11 whether Mr. Dondero or Ms. Dondero entered into any

A. No, not other than what's been pled, or

16 touched on earlier, you gave some testimony about how

due in December or on or about December 31, 2020.

Do you remember talking about that?

Q. And I don't know if you're specifically

23 understanding that HCMS and HCRE also had payments that

22 referring to these loans, but is it also your

17 in -- there were certain term loans that had payments

12 type of oral agreement prior to the bankruptcy?

Q. I want to talk a little bit about, you

25 Q. You told me you may have had questions with

- 1 Q. Is it fair to say that if those payments were
 - 2 to be made, it would have been Ms. Hendrix that would
 - 3 have gone and effectuated those payments?
 - 4 MR. MORRIS: Objection to the form of the
 - 5 question.
 - 6 THE WITNESS: Can you remind me the entities
 - 7 again.

10

- 8 Q. (BY MR. AIGEN) Sorry. HCMS and HCRE
- 9 Partners.
 - A. HCMS, yes. HCRE, I'm not sure, maybe.
- 11 Q. Why might it have been different?
 - A. I just don't recall who had the, you know,
- 13 kind of bank access to effectuate that payment. I
- 14 think Kristin did but I'm not certain.
- 15 O. It wouldn't have been you: is that fair to
- 16 say?
- 17 A. Correct. It would not have been me.
- 18 Q. And if Ms. Hendrix testified that the
- 19 instruction she received in December 2020 about not
- 20 making payments related only to the Advisors and not to
- 21 HMS or HCRE, would you have any reason to disagree with
- 22 her?
- 23 MR. MORRIS: Objection to the form of the
- 24 question.
- 25 THE WITNESS: Yeah, I was struggling with

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- 1 that question. There was a lot to it. If you don't
 - 2 mind
 - 3 Q. (BY MR. AIGEN) Okay. I'll repeat it. Maybe
 - 4 that will help.
 - 5 MR. MORRIS: Why don't you ask him about his
 - 6 knowledge, instead of Kristin's. You had her as a
 - 7 witness.
 - 8 I'll continue to object. I don't know why
 - 9 you're asking him about her knowledge.
 - MR. AIGEN: Do you want to keep coaching him?
 - 11 MR. MORRIS: No, I'm trying to coach you.
 - **MR. AIGEN:** Oh, thanks. That's good.
 - 13 Appreciate if you stop coaching your witness.
 - 14 Q. (BY MR. AIGEN) If Ms. Hendrix testified that
 - 15 the instructions she received in December 2020
 - 16 regarding not making any more payments related only to
 - 17 the Advisors and not to HMS or HCRE, would you have any
 - 18 reason to disagree with her?
 - MR. MORRIS: Objection to the form of the
 - 20 question.
 - 21 THE WITNESS: I have no reason to question
 - 22 Kristin's testimony. I'm sure she gave truthful
 - 23 testimony.
 - 24 Q. (BY MR. AIGEN) Are you aware or not of
 - 25 whether Ms. Hendrix was told by Mr. Waterhouse not to

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26 (Pages 101 to 104)

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- 1 make payments from certain entities in December of2 2020?
- MR. MORRIS: Objection to the form of thequestion.
- 5 THE WITNESS: Yeah, I'm aware, and I think I
- 6 spoke to that earlier of the instruction that had come
- 7 down from Dondero through Frank to Kristin, and I was
- 8 certainly aware of it.
- 9 And I'm -- and I think I spoke to the fact
- 10 that, you know, certainly hearing it from a person who,
- 11 as I said before, wasn't really on the team at that
- 12 point, it was certainly my understanding that that was a
- 13 global instruction at the time.
- 14 Q. (BY MR. AIGEN) And I want to get into what
- 15 was actually said and what you remember, so let me ask
- 16 you this.
- 17 This instruction that came down started from
- 18 Jim and went to Frank. Is that your understanding?
 - A. That's my understanding.
- 20 Q. You weren't there during that discussion I
- 21 assume; is that correct?
- 22 A. Correct, I was not.
- 23 Q. And then Frank gave an instruction to
- 24 Kristin; is that your recollection?
- MR. MORRIS: Objection to the form of the

- 1 Q. When you say it was conveyed to you, are you
 - 2 talking about subsequent discussions that you had with
 - 3 Ms. Hendrix and Mr. Waterhouse after they talked to
 - 4 each other?
 - 5 A. Yes.
 - 6 Q. Sitting here today, can you tell me for sure
 - 7 that one of them told you that this instruction related
 - 8 to all of the entities, as opposed to just the
 - 9 Advisors?
 - 10 A. No, I can't say that with certainty, but I
 - 11 think that that was the case. But, again, I can't say
 - 12 with certainty.

17

- 13 Q. Would you defer to Mr. Waterhouse and
- 14 Ms. Hendrix over what the specific instructions were?
- **MR. MORRIS:** Objection to the form of the **16** question.
 - THE WITNESS: Like I said, I wasn't part of
- 18 the conversation, so I would defer to people who
- 19 received the directions more directly.
- 20 Q. (BY MR. AIGEN) And you're not aware of
- 21 anything in writing or anything that reflects these
- 22 instructions on whether to pay or not to pay certain
- 23 payments in December of 2020?
- 24 A. No, I'm not aware of anything in writing.
- Q. And let's change topics for a second here.

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1 question.

- THE WITNESS: Yeah, it's my understanding
- 3 that Frank informed Kristin of that instruction.
- 4 Q. (BY MR. AIGEN) Were you there when Frank
- 5 provided this instruction to Kristin?
- 6 A. I don't believe I was.
- 7 Q. Then can I ask, how did you become aware that
- 8 Frank had given this instruction to Kristin?
- 9 A. Through subsequent conversations with Frank
- 10 and Kristin. As I said before, I don't recall if it
- 11 was the three of us or me and Frank or me and Kristin.
- 12 But subsequent conversations.
- 13 Q. Are we talking about conversations back in
- 14 2020 or after the bankruptcy?
- **MR. MORRIS:** Objection to the form of the
- 16 question.
- 17 THE WITNESS: During 2020, December of 2020.
- 18 Q. (BY MR. AIGEN) Sitting here today, can you
- 19 say with a hundred percent certainty that the
- 20 instruction related to all of the entities as opposed
- 21 to just Advisors?
- A. So as you pointed out, I was not party to the
- 23 direction, so I have no way of knowing with any sort of
- 24 specificity what the direction actually was. I just
- 25 know how it was conveyed to me and how I understood it.

1 I want to throw out a term. Are you familiar

- 2 with the term "NAV ratio trigger period" as it was used
- 3 in --

4

- A. In a very, very general sense, yes.
- 5 Q. And in a general sense what does that term
- 6 mean to you?
- 7 A. It's a term I recognize from the limited
- 8 partnership agreement of HCMLP. It's a defined term in
- 9 that agreement.
- 10 Q. To your knowledge, was the NAV ratio trigger
- 11 period ever reached or triggered prior to the Highland
- 12 bankruptcy?
- 13 A. I don't know the definition, so I don't know
- 14 based on the definition whether it had or hadn't.
- 15 Q. Sitting here today, though, it's not your
- 16 belief, based on your experience, that it was
- 17 triggered; is that fair to say?
- 18 MR. MORRIS: Objection to the form of the
- 19 question.
- 20 THE WITNESS: I don't know the consequence of
- 21 being in a trigger period, I guess is what -- how I'm
- 22 trying to answer your question.
- Q. (BY MR. AIGEN) Have you ever had any
- 24 conversations with Nancy Dondero?
- 25 A. Yes.

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- $1\qquad Q.\ \ Generally, how many and what was the$
- 2 reasoning?
- 3 A. Probably less than five. I think maybe only
- 4 one or two that I can really remember.
- ${\bf 5}$ Q. At a high level what were those conversations
- 6 about?
- 7 A. From my recollection of my conversations with
- 8 her, they pertained to the DRIP, which is a dividend
- 9 reinvestment program that I helped.
- 10 Q. And approximately when were these
- 11 conversations?
- 12 A. I don't know. Sometime between 2017 and
- 13 probably 2019. I couldn't tell you with any
- 14 specificity. These were very informal.
- 15 Q. Fair to say that you've never had any
- 16 conversations with Nancy Dondero about any of the loans
- 17 at issue in this case?
- 18 A. No, no, no, I've never had a conversation
- 19 with her like that.
- Q. And fair to say that you've never had any
- 21 conversations with Nancy Dondero about compensation for
- 22 Jim or any other officers at Highland?
- 23 A. Correct.
- 24 MR. AIGEN: Why don't we go off the record
- 25 for two minutes. I think I'm either done or about

- 1 Can you just generally explain to me what
 - 2 services Highland Capital Management provided for
 - 3 HCMS and HCRE?
 - 4 A. For HCMS -- I do need to separate these a
 - 5 little bit. For HCMS, really full-service accounting,
 - 6 tax, treasury, cash payments. I said tax. Valuation.
 - 7 Nothing personnel-wise because they didn't have any
 - 8 employees.
 - That's all I can think of right off the top
 - 10 of my head, but I could be missing some.
 - 11 Q. And what about HCRE? How is that different?
 - 12 A. Similar, except different types of assets.
 - 13 So more real estate, so less heavy.
 - 14 Maybe not necessarily differences in terms of
 - 15 the types of services, but services would have, I'd
 - 16 say, more cash activity, more variety of investments,
 - 17 which triggers different types of activities going on
 - 18 at those entities.

19

- But similar in terms of tax operations,
- 20 making payments. HCRE didn't have employees, so no
- 21 payroll. So these would be the broad areas that I
- 22 would think about.
- 23 Q. And you mentioned making payments. Would one
- 24 of those services that Highland provided for these two
- 25 entities include making loan payments on the term loans

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- 1 done.
- 2 (Off the record.)
- 3 Q. (BY MR. AIGEN) You understand you're still
- 4 under oath?
- 5 A. Yes.
- 6 Q. Are you aware of any loans that Highland has
- 7 made to any employees or officers that were forgiven in
- 8 all or in part?
- 9 A. Yes.
- 10 Q. Can you tell me who?
- 11 A. I don't know that this will be a complete
- 12 list, but there were a few employees in the kind of
- 13 late aughts, maybe 2010, 2011 frame.
- 14 Q. Do you know the names?
- 15 A. One was Jack Yang. Another, I'm not sure if
- 16 it was forgiven or not, that's why I'm hesitating, but
- 17 it was Tim Lawler. I think his was forgiven in part or
- 18 in full, but I'm not a hundred percent certain.
- 19 Q. And any other individuals that received loans
- 20 that were forgiven in part that you're aware of?
- 21 A. Not that I recall, but there could be others.
- 22 Some of this is very, very old.
- Q. Changing topics here a little bit, I'm going
- 24 to combine two entities to try to speed this up. If
- 25 you need to separate, that's fine.

- 1 like the term loans at issue in these proceedings?
- MR. MORRIS: Objection to the form of the
- 3 question.
- THE WITNESS: I think I mentioned before, I
- 5 couldn't remember whether or not Kristin was authorized
- 6 to make payments with respect to HCRE. I think she
- 7 probably was, but I don't know that with certainty.8 But, you know, for services, certainly Kristin
- 9 and her team would be responsible for making those
- 10 payments, subject to the proper authorization.
- O. (BY MR. AIGEN) And I'm sorry if I asked this
- 12 before. If it wasn't Kristin for HCRE, do you have an
- 13 idea who it would have been?
- 14 A. If not Kristin, it would have been Melissa
- 15 Schroth.

18

- 16 Q. And how were those responsibilities split up?
- 17 What entities was Melissa Schroth responsible for?
 - A. Generally speaking, Melissa was more
- 19 responsible for entities that were really, like -- I'm
- going to use this in the most general sense, like Jim
- 21 entities, Jim's trusts, Jim personally.
- 22 And for HCRE it was kind of in the middle.
- 23 When it started out it kind of was more Jim world and
- 24 then over time it got more complex.
- 25 And as entities got more complex over time

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28 (Pages 109 to 112)

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109 111 1 they tend to get transitioned from Melissa to corporate 1 that was due at the end of the year? 2 accounting. And when they got really complex over to A. Yes, we continued to track it through our 3 another group of fund accountants. 3 interest schedules and through cash. 4 So this is one that was, at its beginning, O. So in the debtor's books and records is there 5 Melissa was the, called primary accountant. And at 5 any evidence that the payments that were made in early 6 some point in time that transitioned to the corporate 2019 were intended to relieve NexPoint's obligation to 7 accounting team. I can't remember when the cash make the installment payment due at the end of the 7 process kind of cut over. Q. Is there a list somewhere saying Melissa is 9 MR. RUKAVINA: Objection. Best evidence. 10 responsible for these, Kristin for the others, or is it 10 THE WITNESS: No, I don't believe so. 11 just more of a pattern or matter of practice? 11 Q. (BY MR. MORRIS) Did you have a conversation A. More of a matter of practice. If you're 12 with anybody at any time in the year 2019 about whether 13 responsible for an entity, you're responsible. If 13 the payments made earlier in the year on behalf of 14 you're not, then you're not. 14 NexPoint would eliminate or suspend its obligation --15 **MR. AIGEN:** That's all the questions I have. 15 withdrawn. 16 Thank you for your time. 16 Did you have any conversation with anybody --THE WITNESS: Thank you. 17 17 I think I screwed up the dates. Going to have to start 18 **EXAMINATION** 18 over. 19 O. (BY MR. MORRIS) Just a few, Mr. Klos. Let's 19 Let me ask better questions. 20 pick up where Mr. Aigen left off. 20 You looked with Mr. Rukavina at certain 21 To the best of your knowledge, did HCMS have 21 payments that were made in early 2019 with respect to 22 a shared services agreement with Highland? the NexPoint note. 23 A. No, it didn't that I'm aware of. 23 Do I have that right? 24 Q. But you described certain services that HCMLP 24 A. Yes. 25 provided to HCMS; is that right? 25 Q. Notwithstanding those payments, did NexPoint 110 112 A. Yes. 1 1 make the installment payment that was due at the end of Q. Do you know whether HCMFA ever compensated --3 do you know whether HCMS ever compensated HCMLP for any 3 MR. RUKAVINA: Objection. Calls for a legal 4 conclusion. 4 of those services that HCMLP provided? A. No, it didn't. 5 THE WITNESS: It did make the payment that Q. You mentioned HCRE. To the best of your was due at the end of 2019. Q. (BY MR. MORRIS) And the payment that it made 7 knowledge, did HCRE have a shared services agreement with Highland Capital Management, LP? at the end of 2019, was that the annual installment A. No, it didn't. payment that was called for in the note itself? 10 MR. RUKAVINA: Objection. Legal conclusion. 10 Q. Did HCRE provide the services that --11 THE WITNESS: Yes, it was a payment pursuant 11 withdrawn. 12 to the note. 12 Did HCMLP provide the services to HCRE that 13 vou just described? Q. (BY MR. MORRIS) Did anybody ever tell you at A. Yes. 14 any time prior to the commencement of this lawsuit that 15 any prior payment by or on behalf of NexPoint relieved Q. Did HCRE ever compensate HCMLP for any of the 15 16 it of any obligation to pay the installment payment due 16 services that HCMLP provided? 17 at the end of 2020? 17 18 A. No. 18 Q. Okay. Mr. Rukavina asked you some questions 19 Q. And did in fact -- is it your understanding 19 about payments that were made on the NexPoint loan in 20 that Mr. Dondero specifically authorized Highland to the first half of 2019.

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23

25

22 January 2021?

24 that to have occurred.

A. I don't have specific knowledge, but I know

21 effectuate a payment on NexPoint's behalf in mid

Q. Okay. Notwithstanding those payments, did

24 your group continue to carry on its books and records

25 NexPoint's obligation to make the installment payment

Do you remember that?

A. Yes, generally.

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29 (Pages 113 to 116)

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113 115 1 withdrawn. Q. And you sent it to the corporate accounting Did anybody tell you in December 2020 or 2 email group; is that right? 3 December -- or January 2021 that NexPoint didn't have A. I did. 4 to make the installment payment at year end 2020 Q. And to the best of your recollection, was 5 Mr. Waterhouse included in that email group? 5 because of some prior prepayment? A. No. A. Yes, absolutely. Q. Can you think of any reason -- withdrawn. Q. And did you instruct the corporate accounting 8 8 team to transfer \$2.4 million from HCMLP to HCMFA on Did you ever hear Mr. Dondero -- withdrawn. Did you ever see anything in writing where May 2, 2019? 10 10 NexPoint ever contended, prior to February 1, 2021, A. Yes, specifically Blair, but yes, for the 11 that it had no obligation to make the payment due at 11 team as well. 12 the end of 2020 because of some prepayment issue? Q. The whole team was aware of this? 12 13 A. No, not that I remember. 13 A. The whole team is on the email, and I'm 14 Q. Can you think of any reason why Mr. Dondero 14 sending to Blair, who is the AP person, to please set 15 would have authorized a payment by NexPoint to HCMLP on 15 up the payment. 16 account of the note in January of 2021 if he actually 16 Q. Is it fair to say that you're being 17 believed at that time that no obligation was due 17 completely transparent here by including the entire because of a prior prepayment? 18 corporate accounting group on this email? MR. RUKAVINA: Objection. Speculation, lacks 19 A. Yes. 20 foundation. 20 Q. And did you tell the entire corporate 21 THE WITNESS: No. 21 accounting group that this transaction would be a, 22 Q. (BY MR. MORRIS) Does it make any sense to 22 quote, new interco loan? 23 you as an accountant that you would pay a seven-figure 23 A. Yes, that's what the email says. sum of money that you didn't think was due and owing? 24 Q. Do you have any reason to believe that A. No, that does not make sense to me. 25 Mr. Waterhouse didn't get this? 114 116 1 1 Q. Can you get Exhibit 13, please. A. No, he got this. 2 A. Got it. Q. And did Mr. Waterhouse tell you at any time Q. You were asked some questions about 3 in the history of the world that this \$2.4 million 4 paragraph 3. 4 should not have been booked as a loan? 5 Do you see that? 5 A. No. A. Yes. Q. Did Mr. Dondero tell you at any moment in the history of the world that this transaction should not Q. Does paragraph 3 mention annual installment payments at all? 8 have been booked as a loan? A. No, I'm not seeing it. 9 A. No. Q. Does paragraph 3 state in any way that a 10 Q. You mentioned that there was an audit that 11 prepayment as described in that paragraph would relieve 11 followed shortly thereafter? 12 the maker of the obligation to make annual installment 12 A. Yes. Q. Are you familiar with the debtor's audited 13 payments? 13 14 A. No. 14 financial statements for the period ending 2018? 15 Q. Can you turn to the next page and look at 15 A. Yes, generally. Not total recall, but yes. 16 paragraph 5. Q. Are you aware that this loan was included as 16 17 Are you familiar with that paragraph at all? 17 a subsequent event in the debtor's audited financial 18 A. No. I mean, I've seen it before, but this 18 statements?

Q. Can you get Exhibit 3, please. This is your 22 23 email dated May 2, 2019.

is, as I said before, this is a provision that probably would have been in most, if not all, of these types of

24 Do I have that right?

25 A. Yes.

notes.

19

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Q. (BY MR. MORRIS) Did Mr. Dondero or 22 Mr. Waterhouse or anybody ever tell you that the debtor 23 should not have included this \$2.4 million loan in its

MR. RUKAVINA: Objection. Best evidence.

24 audited financial statements?

25 **MR. RUKAVINA:** Objection. Best evidence.

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21

30 (Pages 117 to 120)

David Klos - October 27, 2021 119 117 1 THE WITNESS: No. 1 A. No. Q. Did anybody in the history of the world ever 2 Q. (BY MR. MORRIS) Okay. And the next day 3 there was another loan; right? 3 raise a question to you as to whether or not Kristin 4 4 was authorized to paper the loan, as she describes it A. Yes. 5 Q. I'm going to show you here a document that's 5 in this particular email? 6 been produced. A. No. 7 MR. RUKAVINA: Would you email it to me and I 7 Q. Do you know if this \$5 million loan was also 8 can print it out for the court reporter. 8 included in the debtor's audited financial statements? q MR. MORRIS: You want to come over here and MR. RUKAVINA: Objection. Best evidence. 10 look --10 THE WITNESS: Yes. Again, subsequent event. 11 MR. RUKAVINA: I know it. I'm just thinking Q. (BY MR. MORRIS) Okay. And did anybody in 11 12 that we can append it to the record right now. 12 the history of the world ever tell you that Highland MR. MORRIS: It's eight pages, so it's part 13 13 should not have included as a subsequent event in its 14 of a whole production. 14 2018 audited financial statement this \$5 million loan? MR. RUKAVINA: But it's just one email? 15 15 A. No. MR. MORRIS: Just one email that I'm talking 16 MR. RUKAVINA: Objection. Best evidence. 16 about. So we're looking at Bates stamp D-CNL003763. 17 17 THE WITNESS: No. 18 And I'll email it to you when we're done here. 18 Q. (BY MR. MORRIS) Do you know if HCMFA had its 19 And you're welcome to come over here if you'd like to 19 financial statements audited? 20 20 A. It did. 21 Q. (BY MR. MORRIS) Mr. Klos, can you take a 21 Q. And are you generally familiar with those 22 look at the email that I have on my screen. 22 financial statements? 23 23 A. Yes. 24 Q. And do you see that it's an email from 24 Q. Are you aware that these two loans totaling 25 Kristin Hendrix to the corporate accounting group on 25 \$7.4 million were included in HCMFA's audited financial 118 120 1 Friday, May 3? 1 statements as a subsequent event for the period ended 2 A. Yes. 2 December 31, 2018? Q. And were you also included in the corporate A. Yes. 4 accounting email string? MR. RUKAVINA: Objection. Best evidence. A. Yes. Q. (BY MR. MORRIS) Did anybody in the history Q. Can you read the email out loud, please. 6 of the world ever tell you that HCMFA should not have 7 included as a subsequent event the borrowing of the A. It says, Blair, please set up a wire from 8 HCMLP to HCMFA for 5 million as a new loan, 8 money reflected in these loans? parentheses, 4.4 million should be coming in from Jim 9 MR. RUKAVINA: Objection. Best evidence. $10\,$ soon. Hayley, please add this to your loan tracker. I 10 THE WITNESS: No, no one said that. 11 will paper the loan. Q. (BY MR. MORRIS) Do you know if HCMFA Q. So based on that email, did you understand on 12 included these loans as a liability on its balance 13 May 3 that HCMLP was going to loan \$5 million to HCMFA? 13 sheet? A. Yes, HCMFA. 14 A. It did. 15 MR. RUKAVINA: Objection. Move to strike.

Q. And did you understand that Kristin 16 specifically told the corporate accounting group that she would take responsibility for papering the loan? A. Yes, that's what she says. 19 Q. Do you recall whether Mr. Waterhouse ever objected to any aspect of Kristin's email?

Q. Do you recall in the history of the world 23 whether Mr. Waterhouse ever told you that this

24 \$5 million transaction should not have been booked as a

16 Best evidence. Q. (BY MR. MORRIS) Did anyone in the history of 18 the world ever tell you that HCMFA should not have 19 included these loans as a liability on its balance 20 sheet? 21 MR. RUKAVINA: Objection. Best evidence. 22 THE WITNESS: No. Q. (BY MR. MORRIS) Okay. Do you recall that in 24 October of 2020 HCMFA and NexPoint made a report to the 25 retail board?

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A. He didn't.

22

25 loan?

31 (Pages 121 to 124)

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- 1 A. Yes.
- 2 Q. And are you aware that that's part of the
- 3 annual review process?
- 4 A. Yes, it's the 15(c) process.
- 5 Q. By the way, as we're talking about these
- 6 issues, did Mr. Waterhouse have -- was he an officer of
- 7 HCMFA in 2019 and 2020?
- 8 A. Yes.
- 9 Q. And what's your understanding as to the
- 10 office he held?
- 11 A. Treasurer, I believe.
- 12 Q. And do you know if Mr. Dondero held an
- 13 officer position with respect to each of the Advisors?
- 14 A. He did.
- 15 Q. What position did he hold?
- 16 A. I don't recall with certainty, but I believe
- 17 president.
- 18 Q. As officers of those two entities, do you
- 19 have any knowledge as to whether they participated in
- 20 the communications with the retail board in the fall of
- 21 2020?
- 22 A. I believe Jim and Frank both did.
- 23 Q. And do you know whether the retail board
- 24 asked the Advisors for a report on all obligations due
- 25 and owing to HCMLP and affiliates?

- 1 A. Not that I'm aware of.
- 2 Q. You referred to a couple of loans that were
- 3 given to individuals earlier.
- 4 Do you remember that?
- 5 A. Yes.
- 6 Q. What's the biggest loan that you can recall
- 7 Highland ever forgiving?
- A. The largest one that I can remember was
- 9 a half-million dollars, 500,000.
- 0 Q. So you have no knowledge of any loan ever
- 11 being forgiven where the principal amount forgiven
- 12 exceeded \$500,000; is that right?
- 13 A. Not that I'm aware of.
- 14 Q. And when is the last loan that Highland
- 15 forgave in whole or in part to one of its officers or
- 16 employees that you can recall?
- 17 A. I don't know a specific year, but it would
- 18 have been in the 2010, 2011 time frame. Maybe 2012,
- 19 but I suspect '10 or '11.
- Q. So is it fair to say to the best of your
- 21 recollection and knowledge that Highland did not
- 22 forgive a single loan made to an officer or employee
- 23 for at least seven years prior to the petition date?
- 24 A. There's none that I can think of.
- Q. Let's just turn our attention to

122

- 1 A. They asked for financials, I believe as of
- 2 6/30 as part of that process.
- 3 Q. And are you aware as to whether or not the
- 4 financials that were provided to the retail board
- 5 included, among other things, the \$7.4 million in notes
- 6 that were -- that we're talking about here?
- 7 A. Yes, those financials would have included
- 8 those amounts as liabilities to HCMLP.
- 9 Q. Did Mr. Dondero or Mr. Waterhouse ever tell
- 10 you or anybody to your knowledge that the Advisors
- 11 should not have told the retail boards that they were
- 12 obligated to pay under those two notes?
- 13 A. No.
- 14 Q. Let's talk about loan forgiveness for a
- 15 moment.
- 16 How long have you been with the company?
- 17 A. March of 2009.
- 18 Q. At any time since you've been employed by
- 19 Highland, has Highland ever forgiven a promissory note
- 20 that it held where the maker was a corporate affiliate?
- 21 A. Not that I can recall.
- Q. Have you ever heard prior -- has anybody ever
- 23 told you that before you joined the company, Highland
- 24 had ever forgiven in whole or in part any note that it
- 25 held where the maker was a corporate affiliate?

- 1 December 2020.
 - Do you recall that you testified at length
- 3 about your understanding of the conversations with
- 4 Mr. Waterhouse and Ms. Hendrix?
- 5 Do you remember that?
- 6 A. Yes.
- 7 Q. Okay. Are you aware of any instruction ever
- 8 made by Mr. Dondero or Mr. Waterhouse in November or
- 9 December 2020 in order to make the payments that were
- 10 due under the three term notes -- withdrawn.
- 11 There were three term notes that were due --
- 12 withdrawn.
- 13 There are three term notes at issue in this
- 14 case. Do you understand that?
- 15 A. Yeah, that's my understanding.
- 16 Q. And one of them was issued by NexBank; is
- 17 that right?
- 18 A. NexPoint Advisors.
- 19 Q. Thank you for the clarification.
 - One was by HCRE?
- 21 A. Correct.
- 22 Q. And one was from HCMS; do I have that right?
- 23 A. Yes.

20

- Q. And all three of those notes were executed as
- 25 of May 31, 2017; right?

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32 (Pages 125 to 128)

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- 1 A. Yeah, that was the effective date on all
- 2 three.
- 3 Q. And they all rolled up previously outstanding
- 4 notes that were due and payable to Highland.
- 5 Do I have that right?
- 6 A. Correct. To the best of my recollection.
- 7 Q. So we'll refer to those notes as the term
- 8 notes. Is that okay?
- 9 A. Sure.
- 10 Q. Do you have any knowledge that Mr. Dondero or
- 11 Mr. Waterhouse ever instructed HCMLP to make the
- 12 installment payments that were due at the end of 2020
- 13 with respect to any of those term notes?
- 14 A. No, I don't believe they provided that
- 15 instruction to make those payments.
- 16 MR. RUKAVINA: Objection. Move to strike.
- 17 Lacks foundation.
- 18 MR. MORRIS: I'm asking him if he ever heard.
- 19 MR. RUKAVINA: But he answered a different
- 20 question. He answered a different question.
- Q. (BY MR. MORRIS) Did you ever see anything in
- 22 writing where either Mr. Dondero or Mr. Waterhouse
- 23 directed HCMLP to make the annual installment payments
- 24 that were due at the end of 2020 with respect to any of
- 25 the term notes?

FURTHER EXAMINATION

- Q. (BY MR. RUKAVINA) Go to Exhibit 16, please,
- 3 1-6.

1

- 4 A. Sure.
- 5 Q. Sir, this is an email string regarding that
- 6 Rule 15(c) that you were talking about. I'm just going
- 7 to ask you about the top email, but you're welcome to
- 8 read the whole.
- 9 A. Uh-huh.
- 10 Q. You're copied on Mr. Waterhouse's email there
- 11 October 6, 2020; right?
- 12 A. Yes, I'm on the email.
- 13 Q. And Mr. Waterhouse writes, the HCMFA note is
- 14 a demand note. You would have read that; right?
- 15 A. Yes.
- O. Did vou ever correct Mr. Waterhouse when he
- 17 says the HCMFA note, as opposed to notes?
- 18 A. No, that's not something I would have
- 19 corrected from Frank.
- Q. Do you recall right now that you might have,
- 21 when you read this, realized that he made a mistake?
- 22 A. It would have been such a de minimus,
- 23 inconsequential mistake that I don't know that I would
- 24 have addressed it.
- 25 O. What about two sentences over, there was an

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1 A. No.

2

- Q. Okay. But to the best of your recollection,
- 3 in the 13-week forecast, those forecasts included the
- 4 installment payments that were due at the end of the
- 5 year; is that right?
- 6 A. They did.
- 7 Q. Did anybody ever tell you prior to
- 8 February 1, 2021, that your group had made a mistake by
- 9 not making the payment -- any of the payments that were
- 10 due under the term notes at the end of 2020?
- 11 A. Not that I'm aware of.
- 12 Q. Did anybody tell you prior to February 1,
- 13 2021, that the makers of the term notes expected
- 14 Highland to effectuate the payments that were due at
- 15 the end of the year without approval by Mr. Waterhouse
- 16 or Mr. Dondero?
- 17 A. No.
- 18 Q. Have you seen any protest in writing prior to
- 19 the commencement of the litigation by any of the makers
- 20 of the notes about a failure on the part of HCMLP to
- 21 perform its duties and make that payment at the end of
- 22 the year?
- 23 A. No.
- **MR. MORRIS:** I have no further questions.
- 25 MR. RUKAVINA: I have five minutes.

- 1 agreement between HCMLP and HCMFA the earliest they
- 2 could demand is May 2021.
- 3 Did you ever write to him and say that too
- 4 was a mistake?
- 5 A. I didn't write to him.
- 6 Q. Did you realize back then when you read it
- 7 that he had made a mistake?
- 8 A. I'm not certain.
- Q. Did you -- and I'm not suggesting that you
- 10 should have. You're a busy man. But did you attach
- 11 any significance outside of the ordinary to this email
- 12 exchange?
- 13 MR. MORRIS: Objection to the form of the
- 14 question.
- 15 THE WITNESS: I struggle with how to answer
- 16 that. I saw that this note was in response to retail
- 17 15(c) follow-up on the Advisors.
- 18 At this point my role was different, where I
- 19 was dealing with really the retail funds primarily. So
- 20 the fact that I'm even on this email is somewhat
- 21 incidental.
- 22 Q. (BY MR. RUKAVINA) But surely on October 6,
- 23 2020 you knew that there were four HCMFA demand notes,
- 24 didn't you?
 - A. I'm sure I would have had access to that

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131 129 1 information. I'm not sure that I was keeping track of Q. And Mr. Morris asked you whether you see 2 how many were outstanding at any given point in time. 2 anything in here that says that a prepayment relieves Q. And surely on October 6, 2020 you knew that 3 an annual installment. 4 only two of them couldn't be demanded by May of 2021, Do you remember that question? 5 didn't you? 5 MR. MORRIS: Objection. That's not what I 6 A. Again, I don't know that I was even really 6 asked. 7 thinking about these notes at that time. 7 THE WITNESS: I don't remember that question. Q. Even though you were preparing weekly cash Q. (BY MR. RUKAVINA) Reading Section 2.1 and 3 forecasts for Mr. Seery? together, what would a prepayment apply to other than A. I wasn't preparing a weekly cash forecast for 10 10 an annual installment? Do you have a view on that? 11 Mr. Seery. MR. MORRIS: Objection to the form of the 11 12 Q. Going to Exhibit 13, please. Mr. Morris 12 question. 13 asked you a couple questions about this. 13 THE WITNESS: Again, I struggle with 14 A. I'm sorry, 13? 14 prepayment. But as I read Section 3, it would be 15 Q. Yes, sir. And again, that paragraph 3 that 15 applied first to unpaid accrued interest and then to 16 talks about prepayment. 16 unpaid principal. 17 Can you find anything in here, sir, that says 17 Q. (BY MR. RUKAVINA) Have you ever in your 18 that a prepayment does not relieve the maker of any 18 personal life prepaid a promissory note before -- have regularly scheduled payment? 19 you ever in your personal life prepaid a promissory 20 A. Sorry, that's a lot to comprehend. If you 20 note prior to its maturity? 21 could ask again. 21 MR. MORRIS: Objection to the form of the 22 Q. Is there any provision that you can see here 22 question. 23 that's to the effect that a prepayment will not relieve 23 THE WITNESS: I don't know. the maker of any regularly scheduled payment? 24 Q. (BY MR. RUKAVINA) Sitting here today, with A. I don't see that specific provision. I just 25 your CPA, your MBA and you're a CFO of a large entity,

> 130 132

1 read it for what is on the page.

Q. Isn't it, sir, in your experience the case

3 that a promissory note, if it intended not to relieve

4 the borrower of regularly scheduled payments would say

5 that a prepayment does not relieve the borrower of

6 regularly scheduled payments?

7 MR. MORRIS: Objection to the form of the 8 question.

THE WITNESS: That's a legal question. I

10 can't -- I don't know the answer.

Q. (BY MR. RUKAVINA) Do you remember seeing

12 promissory notes that say something like that?

13 A. Not that I can recall.

14 Q. You'd be surprised if that's what promissory

15 notes say?

16 MR. MORRIS: Objection to the form of the

17 question.

18 THE WITNESS: I don't know.

19 Q. (BY MR. RUKAVINA) And Mr. Morris asked you

about this. I'm trying to burn through this so the man

21 can make his plane.

22 Section 2.1 talks about 30 equal annual

23 payments, annual installments.

24 You see that?

25 A. Yes, I see that. 1 you don't understand what a prepayment means?

2 MR. MORRIS: Objection. Argumentative.

3 I direct you not to answer.

4 You're going to have ask a different question.

That's an argumentative question and it's insulting.

MR. RUKAVINA: What's the privilege on which

you're directing him not to answer?

8 MR. MORRIS: I just said it's argumentative.

MR. RUKAVINA: I'm trying to let you get to

10 your flight.

9

11 MR. MORRIS: Ask a proper question. Don't

12 make this about me.

Q. (BY MR. RUKAVINA) You were going to answer 13

14 my question, sir?

15 MR. MORRIS: No, I'm directing him not to

16 answer.

17 MR. RUKAVINA: Then we'll end this deposition

18 with a motion to compel.

19 MR. MORRIS: Okay. You do that.

MR. RUKAVINA: I'm making a motion to compel.

21 We'll call the judge as soon as we land in New York

22 tomorrow.

20

MR. MORRIS: You have to read the whole

24 question. You can ask the question without the

25 verbiage; right?

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1	CERTIFICATE OF REPORTER	
2	I, BRANDON D. COMBS, a Certified Shorthand	
3	Reporter, hereby certify that the witness in the	
4	foregoing deposition was by me duly sworn to tell the	
5	truth, the whole truth, and nothing but the truth in the	
6	within-entitled cause;	
7	That said deposition was taken in shorthand by	
8	me, a disinterested person, at the time and place	
9	therein stated, and that the testimony of the said	
10	witness was thereafter reduced to typewriting, by	
11	computer, under my direction and supervision;	
12	That before completion of the deposition,	
	review of the transcript was not requested. If	
14	requested, any changes made by the deponent (and	
15	provided to the reporter) during the period allowed are	
16	appended hereto.	
17	I further certify that I am not of counsel or	
18	attorney for either or any of the parties to the said deposition, nor in any way interested in the event of	
19 20	this cause, and that I am not related to any of the	
21	parties thereto.	
22	DATED: November 1, 2021	
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	138	
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